MEETING DATE: 06/16/08

AGENDA ITEM: **JOINT ITEM to Consider Approval of the "First Amendment To Cooperation Loan Agreement By And Between The City Of Culver City And The Culver City Redevelopment Agency"**

ATTACHMENTS

City of Culver City, California

City Council Agenda Item Report

Meeting Date: 05/29/07	Item Number: J-2
AGENDA ITEM: Joint Item to Authorize a Loan From the City of Culver City to the Culver City Redevelopment Agency for Bond Reallocation.	
Contact Person/Dept.: Todd Tipton/CDD	Phone Number: 310-253-5700
Fiscal Impact: Yes [X] No []	General Fund: Yes [X] No []
Public Hearing: [] Action Item: [X]	Attachments: [X]
Public Notification: Master Notification List (05/24/07).	
Department Approval: Todd Tipton (05/10/07)	City Attorney Approval: Carol Schwab (by H. Iker) (05/16/07)
City Controller Approval: Marlee Chang (5/21/07)	City Manager Approval: Jerry B. Fulwood (05/23/07)

RECOMMENDATION:

Staff recommends the City Council approve a $9,000,000 loan to the Culver City Redevelopment Agency (the "Agency") for the purpose of bond reallocation, and consider loan options and terms.

BACKGROUND/DISCUSSION:

Over the past few years, the Agency has acquired a number of properties throughout the City in furtherance of the Redevelopment Plan. While a number of the properties were purchased with tax increment funds, several properties were purchased with bond funds due to the anticipated project/proforma structure.

Tax exempt bond funds were utilized to purchase the properties at Washington/Centinela with the expectation that the residual land value would not result in a return greater than five percent ($1.5 million) of the total bond issuance ($28 million). The Agency also acquired properties at Washington/National with tax exempt bond funds with the expectation that any portion of the residual land value that exceeded the available return (after Washington Centinela) would be applied to public infrastructure improvements (sidewalks, paseos, right of way, traffic improvements, etc.) related to the project.

Due to the upcoming five year anniversary related to the 2002 bonds and scope/schedule alterations for both projects, it has become necessary to reallocate unrestricted monies to the bond funds by June 24, 2007. This action will allow the Agency to remain flexible in its future use and disposition of the properties. To remain flexible, staff has investigated a number of mechanisms in which to borrow cash to replenish the bond funds for Washington Centinela (approximately $9,000,000). These options include placing deeds of trust on Agency owned property with an outside/private lender, selling/converting Certificates of Participation for taxable bonds, or a loan from the City. In reviewing these options, Agency and City staff have determined that the optimal course of action at this time would be to pursue a loan from the City. This loan would not only be a strategic investment opportunity for the City, earning market interest rate in a range from 4 - 6%, but would also allow for ease in transfer and management between the entities. Loan repayment would be derived from future property sales or increases in tax increment.

It is proposed the funds for the $9,000,000 loan be allocated from the City's general fund reserve. This allocation would represent approximately 1/3 of the current reserve. To this end, fail safe measures would need to be considered in the unlikely event that the City would require these funds be returned prior to the loan repayment date. Two options would be to borrow against Agency owned property as well as selling/converting to taxable bonds.

Throughout this loan period the objective of Agency staff will be shifted to finalize projects with land assets prior to researching or assembling new projects or properties. It is important to note, however, that Agency's direction to specific projects or land sales may impact the rate at which the loan is repaid, and new Agency initiated projects are brought forth for consideration.

FISCAL ANALYSIS:

In structuring this loan, the Agency Treasurer has spoken with several broker dealers regarding market interest rates. The rates currently range from 5.135% to 5.33% for a four year investment with no call for either one to two years, with the possibility of a full payback continuous after one or two years. Interest would be payable every six months. In addition, it is recommended that the Agency pay a slightly higher fee since the City has experienced an interest loss due to keeping these funds available for this potential opportunity.

To this end, staff is recommending this loan be constructed to the following terms:

- Loan term: Up to four years (to allow for tax increment increases to buffer property sales that may take longer than anticipated.)
- Semi annual repayment schedules (July and January)
- Fixed rate (approximately 5%, market bearing)
- No penalty for early repayment
- City has right to call loan at any time.

In regards to repayment amounts, staff has provided principal/interest models for the Council's consideration (Exhibit A). The first model represents principal and interest assuming 4%, 5% and 6% simple interest (compounded bi-annually). The second model reflects an interest only structure. At this time, staff recommends that the Agency approve the principal with the 5% interest model.

With this model, the City could earn up to $1,012,500 in interest payments by the completion of the loan in 2011 which is comparable to interest earning that City would otherwise receive.

EXHIBIT:

Exhibit A: Principal/Interest ratio models for repayment

MOTION:

That the City Council:

1) Approve a loan to the Redevelopment Agency for $9,000,000 to replenish bond funds for properties purchased for the Washington/Centinela project for a four year term, and;
2) Approve a principal/interest repayment model at 5% to engage for the length of the loan.
3) Authorize the City Attorney to prepare/review the necessary documents and authorize the City Manager to execute these documents on behalf of the City.

COOPERATION AND LOAN AGREEMENT BY AND BETWEEN THE CITY OF CULVER CITY AND THE CULVER CITY REDEVELOPMENT AGENCY

THIS COOPERATION AND LOAN AGREEMENT ("Agreement") is entered into this 21st day of June, 2007 ("Effective Date"), by and between the CITY OF CULVER CITY, a municipal corporation ("City") and the CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), with reference to the following facts:

A. Over the last few years, the Agency has acquired a number of properties within the Culver City Redevelopment Project Area for future redevelopment. While a number of the properties were purchased with tax increment funds, several properties were purchased with bond funds due to the anticipated project/pro forma structure.

B. Tax exempt bond funds were utilized to purchase the properties at Washington/Centinela with the expectation that the residual land value would not result in a return greater than five percent ($1.5 million) of the total bond issuance ($28 million).

C. Due to the upcoming five year anniversary related to the 2002 bonds and scope/schedule alterations for both projects, it has become necessary to reallocate unrestricted monies to the bond funds by June 24, 2007.

D. Under Health and Safety Code section 33601 ("Section 33601"), the Agency may borrow money or accept financial or other assistance from any public agency for any redevelopment project within its area of operation, and may comply with any conditions of such loan or grant.

E. In light of this authority under Section 33601, Agency and City staff have determined that the best course of action at this time would be to pursue a loan in the amount of $9,000,000 from the City ("Loan"). Loan repayment would be derived from future property sales, increases in tax increment generated from the Culver City Redevelopment Project Area, and/or other lawfully available funds. The City Council approved the Loan at the Council meeting on June 4, 2007.

F. The source of the Loan shall be the City's reserve fund ("Reserve Fund"). By making the Loan from the Reserve Fund, the City is preserving the required availability of the Reserve Fund, just as it would when the City invests monies from the Reserve Fund in obligations of other public entities, in accordance with the City's investment policy.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1 INTRODUCTORY PROVISIONS

1.1 Recitals Incorporated

The Recitals above are an integral part of this Agreement and set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this Agreement.

ARTICLE 2 LOAN TO AGENCY

2.1 Loan

Pursuant to the terms of this Agreement, City agrees to make the Loan to Agency in the original principal amount of NINE MILLION DOLLARS AND NO CENTS ($9,000,000.00).

2.2 Terms of Repayment

a. General. The Agency shall repay the Loan in accordance with the terms of this Paragraph 2.2.

b. Interest Payments. The outstanding principal shall bear interest at the fixed rate of five point seven percent (5.7%). Accrued interest shall be compounded and paid once every one hundred and eighty-two (182) days from the Effective Date ("Interest Payment"). A penalty equal to three percent (3%) of the Interest Payment due shall apply to any payment that is received after the Interest Payment due date. Any Interest Payment not received by the Interest Payment due date shall be added to the principal balance, shall become and be treated as principal, and shall thereafter bear like interest. Interest Payments received by City pursuant to the terms of this Agreement shall be applied first to the payment of any interest accrued hereunder, then to reduce the principal balance due.

c. Principal Repayment. Repayment of the original principal amount of NINE MILLION DOLLARS AND NO CENTS ($9,000,000) plus any outstanding Interest Payments shall be due and payable in one lump sum to City not later than 5:00 p.m. three hundred and sixty-four (364) days from the Effective Date of this Agreement (the "Maturity Date"), subject to the call provision in Paragraph 2.3, below.

d. No Prepayment Penalty. There shall be no pre-payment penalty if the Agency pays the Loan, in whole or in part, including interest, prior to the Maturity Date.

e. Remedies. If Agency has not paid in full the amounts due under this Agreement by the close of business on the Maturity Date, the interest rate then applicable to the balance due shall increase by one percent (1%), beginning the next calendar day after the Maturity Date until full repayment of principal and accrued interest. Notwithstanding the foregoing, City shall have the right to declare Agency in default and thereafter exercise all rights reserved hereunder for purposes of default.

2.3 Call Provision

Notwithstanding any provision to the contrary herein, the whole or any part of the outstanding principal and accrued interest on the Loan shall be callable from time to time, by the City, in its sole discretion, upon written notice by the City to the Agency of the exact call amount ("Call Amount"). Agency shall have ninety (90) days from the receipt of notice (as determined by Paragraph 4.2, below) to pay the Call Amount.

ARTICLE 3 DEFAULTS AND REMEDIES

3.1 Defaults – General

Failure by either party to perform any obligation under this Agreement constitutes a default under this Agreement, in which case the following shall apply:

a. The injured party shall give written notice of default to the party in default specifying the default complained of. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights and remedies, nor deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

b. The party in default shall have a period of thirty (30) calendar days after such notice is received or deemed received, as set forth in Paragraph 4.2 hereof.

3.2 Institution of Legal Action

If the default is not cured within the time frames allowed by Paragraph 3.1, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default. In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, to seek specific performance, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the State of California, for the County of Los Angeles, or in any other appropriate court located within Los Angeles County.

3.3 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

ARTICLE 4 MISCELLANEOUS PROVISIONS

4.1 Time of Essence

Time is expressly declared to be of the essence in this Agreement and of every provision hereof in which time is an element.

4.2 Notices

Any notice to be given or other document to be delivered by any party to the other or others hereunder, may be delivered in person to an officer of any party, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service, or by facsimile machine if concurrently delivered by another permissible method set forth in this Paragraph, and addressed to the party for whom intended, as follows:

City: City of Culver City
9770 Culver Boulevard
Culver City, CA 90232
Attention: Jerry Fulwood, City Manager
Telephone: (310) 253-6000

Agency: Culver City Redevelopment Agency
9770 Culver Boulevard
Culver City, CA 90232
Attention: Sol Blumenfeld, Community Development Director
Telephone: (310) 253-5760

Any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by United States mail, duly certified and registered, with postage prepaid shall be deemed received on the third day after mailing.

4.3 Binding Effect

This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their respective heirs, personal representatives, successors and assigns, except as otherwise provided in this Agreement.

4.4 Titles and Captions

Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. All references to "Paragraph" shall mean the Paragraphs of this Agreement unless otherwise specified.

4.5 Interpretation

No provision in this Agreement is to be interpreted for or against either party because that party or his legal representatives drafted such provision.

4.6 Further Assurances

The parties agree to promptly execute such other documents and take such other actions as may be reasonably necessary to further the purposes of this Agreement.

4.7 Severance

If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed to be severed and deleted from the Agreement, and the severance and deletion shall not in any way affect the validity of the remaining provisions of this Agreement.

4.8 Liability and Indemnification

In contemplation of the provisions of California Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code Section 895, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve the above-stated purpose, each party indemnifies, defends and holds harmless the other party for any liability, losses, cost or expenses that may be incurred by such other party solely by reason of Government Code Section 895.2.

4.9 Calculation of Time Periods

Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless the last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m., California time.

4.10 Entire Agreement; Waivers and Amendments

This Agreement shall be executed in triplicate originals, each of which is deemed to be an original. This Agreement consists of three (3) pages and one (1) exhibit, which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

This Agreement is intended solely for the benefit of the City and the Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Agency, there shall be no third party beneficiaries under this Agreement.

All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

Dated: 6/21/07

CITY OF CULVER CITY

By [signature]
Jerry Fulwood
City Manager

Dated: 6/21/07

CULVER CITY REDEVELOPMENT AGENCY

By [signature]
Scott Malsin
Chair

APPROVED AS TO FORM:

CITY ATTORNEY

Carol Schwab
Carol Schwab
City Attorney

KANE BALLMER BERKMAN

Murray O. Kane
Murray O. Kane
Agency General Counsel

FIRST AMENDMENT TO COOPERATION LOAN AGREEMENT BY AND BETWEEN THE CITY OF CULVER CITY AND THE CULVER CITY REDEVELOPMENT AGENCY

THIS FIRST AMENDMENT TO COOPERATION LOAN AGREEMENT ("First Amendment") is entered into this ____ day of June, 2008 ("Effective Date"), by and between the CITY OF CULVER CITY ("City") and the CULVER CITY REDEVELOPMENT AGENCY ("Agency"), with reference to the following facts:

A. Under Health and Safety Code section 33601 ("Section 33601"), the Agency may borrow money or accept financial or other assistance from any public agency for any redevelopment project within its area of operation, and may comply with any conditions of such loan or grant.

B. In light of this authority under Section 33601, Agency and City entered into that certain COOPERATION LOAN AGREEMENT ("Agreement") on June 21, 2007, wherein the City agreed to provide, and the Agency agreed to accept, a loan in the amount of $9,000,000 from the City ("Loan") for a term of one year, which term ends on June 21, 2008 (the "Maturity Date").

C. The Agency and City now desire to extend the Maturity Date by an additional year, to June 21, 2009 ("Extended Maturity Date"), subject to the following conditions: (i) the Agency shall make a partial Loan payment to the City in the amount of TWO MILLION DOLLARS AND NO CENTS ($2,000,000.00)("First Payment") within thirty (30) days of the Effective Date of this First Amendment, to be credited, first, against any outstanding interest as of the date of the First Payment, and, second, against the principal balance of the Loan; (ii) the remainder of principal balance of the Loan plus any outstanding interest shall be due and payable in its entirety no later than 5:00 p.m. on the Extended Maturity Date; (iii) the Loan shall remain subject to the call provision in Section 2.3 of the Agreement through the Extended Maturity Date; and (iv) all other terms and conditions of the Agreement shall remain in effect.

NOW, THEREFORE, the Agency and City (the "Parties") do mutually agree as follows:

ARTICLE 1 INTRODUCTORY PROVISIONS

1.1 <u>Recitals Incorporated</u>

The Recitals above are an integral part of this First Amendment and set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this First Amendment.

ARTICLE 2 FIRST PAYMENT OF LOAN TO CITY

2.1 First Payment of Loan

(a) the Agency pay the First Payment to the City within thirty (30) days of the Effective Date of this First Amendment, to be credited, first, against any outstanding interest as of the date of the First Payment, and, second, against the principal balance of the Loan;

(b) the remainder of principal balance of the Loan plus any outstanding interest shall be paid by the Agency in its entirety no later than 5:00 p.m. on the Extended Maturity Date;

(c) the Loan shall remain subject to the call provision in Section 2.3 of the Agreement through the Extended Maturity Date; and

(d) all other terms and conditions of the Agreement shall remain in effect.

ARTICLE 3 MISCELLANEOUS PROVISIONS

3.1 Entire Agreement; Waivers and Amendments

This First Amendment shall be executed in triplicate originals, each of which is deemed to be an original. This First Amendment consists of three (3) pages, which constitute the entire understanding and agreement of the Parties.

This First Amendment integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this First Amendment.

This First Amendment is intended solely for the benefit of the City and the Agency. Notwithstanding any reference in this First Amendment to persons or entities other than the City and the Agency, there shall be no third party beneficiaries under this First Amendment.

All waivers of the provisions of this First Amendment and all amendments to this First Amendment must be in writing and signed by the authorized representatives of the Parties.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first set forth above.

Dated: ____________________

CITY OF CULVER CITY

By ________________________
Jerry Fulwood
City Manager

Dated: ____________________

CULVER CITY REDEVELOPMENT AGENCY

By ________________________
Scott Malsin
Chair

APPROVED AS TO FORM:

CITY ATTORNEY

____
Carol Schwab
City Attorney

KANE BALLMER BERKMAN

____
Murray O. Kane
Agency General Counsel