



Agenda Item B.6
CONSENT CALENDAR
Meeting Date: October 21, 2008

TO: Mayor and Councilmembers
Redevelopment Agency Chair and Agency Members

FROM: Daniel Singer, City Manager/Executive Director

CONTACT: Alvertina Rivera, Finance Director

SUBJECT: Changes on Promissory Note of loan from the City of Goleta to the Goleta Redevelopment Agency

RECOMMENDATION:

As the City Council:

- A. Approve the change to Note Commencement and Maturity Dates of the Promissory Note Evidencing the Loan of Funds from the City of Goleta to the Goleta Redevelopment Agency.

As the Redevelopment Agency:

- B. Approve the change to Note Commencement and Maturity Dates of the Promissory Note Evidencing the Loan of Funds from the City of Goleta to the Goleta Redevelopment Agency.

BACKGROUND:

On June 03, 2008, the City Council and the Goleta Redevelopment Agency approved a \$2.5 million loan from the City to the Goleta Redevelopment Agency in order to continue construction on the City's capital improvement projects, specifically the San Jose Creek Capacity project. That loan was intended to take place on the first day of the following month, which was July 1, 2008, in order to simplify the recordation and tracking of the loan. The commencement and maturity dates on the promissory note (Exhibit 3 of that report) were incorrectly stated.

DISCUSSION:

The attached promissory note contains the corrected commencement and maturity dates.

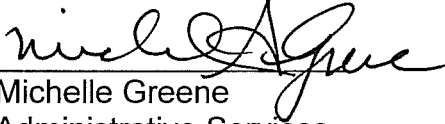
FISCAL IMPACTS:

The corrections ensure that the RDA will have sufficient debt to remain eligible to receive the RDA's full property tax increment. Not taking such remedial action could result in lost revenues for the Redevelopment Agency.

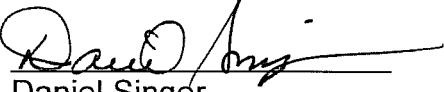
Submitted By:


Alvertina Rivera
Finance Director

Reviewed By:


Michelle Greene
Administrative Services
Director

Approved By:


Daniel Singer
City Manager

ATTACHMENTS:

1. Promissory Note

ATTACHMENT 1

Promissory Note

PROMISSORY NOTE

(Loan from City of Goleta to the Redevelopment Agency for the City of Goleta)

Borrower: Redevelopment Agency for the City of Goleta

Principal Amount: \$2,500,000.00

Note Commencement Date: July 01, 2008

Note Maturity Date: June 30, 2010

FOR VALUE RECEIVED, the REDEVELOPMENT AGENCY FOR THE CITY OF GOLETA, a public body corporate and politic organized and existing under the California Community Redevelopment Law (Health and Safety Code § 33000 et seq.) (hereinafter referred to as "Borrower"), hereby promises to pay to the order of the CITY OF GOLETA, a general law city within the meaning of Government Code § 34102 organized and existing pursuant to Division 1 of Title 4 of the California Government Code (commencing with § 34000 et seq.) ("Lender"), the principal amount of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$2,500,000.00), as hereinafter provided, plus interest until paid in the manner hereinafter set forth.

This Promissory Note ("Note") is delivered by Borrower as a condition precedent of, and is intended to document the loan of funds by Lender to Borrower authorized in, City of Goleta Resolution No. 08-__ ("Resolution"). The terms and conditions of the Resolution are incorporated herein by reference. Should any inconsistency between the terms and provisions of the Resolution and those of this Note arise, the terms and conditions of the Resolution shall control.

INDEBTEDNESS OF AGENCY

1. Term.

- 1.1 The term of the Note ("Term") shall commence upon the first disbursement of loan funds by the Lender to Borrower as authorized by the Resolution ("Commencement Date"). The Term shall continue for a period of twenty-four (24) months from and after the disbursement of funds to Borrower from Lender ("Maturity Date"), or until the proceeds from the anticipated RDA Tax Allocation Bonds are received, whichever occurs first.
- 1.2 The Term may be continued and the Maturity Date may be extended by the mutual agreement of the parties, memorialized in a written amendment of this Note, duly executed by the authorized representatives of the parties.

2. Interest, Payments and Late Charges.

- 2.1 **Interest.** In no event shall the amount of interest paid or agreed to be paid to Lender, or the holder of this Note, exceed the maximum amount permissible under applicable laws. From and after the Commencement Date until the outstanding principal balance on the Note has been repaid in full, this Note shall bear simple interest at a variable rate equal to the Surplus Money Investment Fund Apportionment Yield Rate ("Surplus Fund Rate") established by the California Controller's Office, Division of Accounting and Reporting. The Borrower understands that the interest rate specified herein will fluctuate over the term of the Note and that changes in such rate will not occur more often than once per quarter, at the Lender's discretion.
- 2.2 **Payment.** The entire outstanding principal balance plus all interest accrued thereon shall be due and payable on the Maturity Date of the Note, unless accelerated under Section 3 [Default and Acceleration] of this Note.
- 2.3 **Late Charges.** If Borrower fails to make any payment hereunder when due, and written notice of such failure has been given to Borrower by Lender, and such failure has continued unabated for a period of fifteen (15) calendar days after the date of giving such notice, Borrower shall pay to Lender a late charge equal to two percent (2%) of the amount of such payment.
- 2.4 **Place of Payment.** The sums due hereunder shall be payable in currency of the United States and in good and sufficient funds and shall be paid to Lender at its offices located at 130 Cremona, Suite B, Goleta, California 93117 or at such other location as Lender shall advise Borrower in writing.

3. Default and Acceleration.

Upon the occurrence of any of the following events of Default, Lender may, at its option, declare the entire outstanding balance of this Note, together with all accrued interest and other charges, to be immediately due and payable by Borrower, and Lender may proceed to exercise any or all of its rights and remedies under this Note, at law or in equity. The events of Default are:

- 3.1 **Default on Payment.** Borrower's failure to make full payment when due under this Note;
- 3.2 **Failure to Complete Project.** Borrowers failure to complete the Project within the time provided in the Collective Agreements;
- 3.3 **Assignments.** The making of any assignment for the benefit of creditors by Borrower, or the voluntary appointment (at the request of Borrower or

with the consent of Borrower) of a receiver, custodian, liquidator or trustee in bankruptcy of any of Borrower's or any such guarantor's property or the filing by Borrower or any such guarantor of a petition in bankruptcy or other similar proceeding under law for relief of debtors; or

- 3.4 **Bankruptcy.** The filing against Borrower or any guarantor of this Note of a petition in bankruptcy or other similar proceeding under law for relief of debtors or the involuntary appointment of a receiver, custodian, liquidator or trustee in bankruptcy of the property of Borrower or any guarantor of this Note, where such petition or appointment is not vacated or discharged within sixty (60) calendar days after the filing or making thereof.

4. Attorneys' Fees and Collection Charges.

In the event this Note is not paid when due, whether at maturity or by acceleration, or in the event of any other Default by Borrower under this Note, or in the event of a third party challenge to the validity of this Note, then in addition to the principal and accrued interest, Lender shall be entitled to collect all costs of collection and or defense; such costs and expenses shall include without limitation all court costs, filing fees, and other costs and expenses, including reasonable attorneys', experts', and witness' fees and expenses, and any fees and expenses incurred by Lender herein in connection with any insolvency, bankruptcy, reorganization, arrangement or other proceedings involving the Borrower, which in any way affect the exercise by Lender of its rights and remedies under this Note or the Agreements. All such costs and expenses shall be payable on demand.

5. Usury.

It is the intention of Borrower and Lender to conform strictly to the usury laws that are applicable to this Note. This Note and any other agreements between Borrower and Lender are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to Lender or the holder hereof exceed the maximum amount permissible under applicable usury laws. If under any circumstances, fulfillment of any provision of this Note, or any other agreement between Borrower and Lender, shall involve exceeding limits of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity.

6. No Waiver by Lender.

No single or partial exercise of any power hereunder shall preclude other or further exercise thereof or the exercise of any other power. No delay or omission on the part of the holder hereof in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. The release of any party liable on this Note shall not operate to release any other party liable hereon. No acceptance of a past due installment or indulgence granted from time-to-time shall be construed to be a waiver of the right to insist upon prompt payment thereafter or to impose late charges

retroactively or prospectively, or to preclude the exercise of any other rights which the holder may have.

7. Waiver by Borrowers.

Borrower agrees that it will still be liable for repayment of this Note, even if Lender does not follow all otherwise required procedures (including presentment, protest, demand, diligence, notice of dishonor and of nonpayment), which requirements are hereby waived. To the extent permitted by applicable law, the defense of the statute of limitations is hereby waived by Borrower.

8. Governing Law.

This Note shall be governed by, construed and enforced in accordance with the laws of the State of California, applicable to instruments executed and to be performed in the State of California. Borrowers hereby submit to the jurisdiction of any state or federal court located in the State of California, sitting in the County of Santa Barbara, for the enforcement of Borrowers' obligation hereunder. To the fullest extent permissible, Borrowers waive any defense to such jurisdiction including, within limitation, any defense based on venue or inconvenient forum.

9. Amendments.

Amendments to this Note may only be made by an agreement in writing, signed by the party against whom such amendment is sought to be enforced.

IN WITNESS WHEREOF, Borrowers have caused this instrument to be executed and delivered on the date first written above, by its duly authorized representatives.

REDEVELOPMENT AGENCY FOR THE CITY OF GOLETA

By: _____
ROGER ACEVES, AGENCY CHAIR

ATTEST:

APPROVED AS TO FORM:

DEBORAH CONSTANTINO
AGENCY SECRETARY

TIM W. GILES
AGENCY GENERAL COUNSEL

This Promissory Note is hereby accepted by and on behalf of the City of Goleta.

CITY OF GOLETA

By: _____
MICHAEL T. BENNETT, MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH CONSTANTINO
CITY CLERK

TIM W. GILES
CITY ATTORNEY