

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew Fertal	From:	Kingsley Okereke
Dept:	City Manager and Agency Director	Dept:	Finance
Subject:	REFINANCE OF EXISTING SECTION 108 LOAN	Date:	May 27, 2008

OBJECTIVE

Request that in connection with the 2008 HUD Refinancing of existing 108 loan, including the City's existing 108 Loan, that (1) the City Council approve the 2008 Section 108 Loan Refinance Documents substantially in the form provided by the Secretary of HUD, but subject to and with such changes approved by the City Manager, the City Attorney, and Agency Counsel/City Special Counsel; and (2) the Agency consent to such transaction, all as provided in the attached City Council and Agency resolutions.

BACKGROUND

In May 1997 the City entered into a "Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5308, B-96-MC-06-0505" along with a promissory note and related instruments ("1997 Section 108 Loan") by which the City was awarded 108 loan proceeds from HUD in an original principal amount of \$13,580,000.00. Pursuant to a separate Cooperation Agreement dated as of May 12, 1997 between the City and the Garden Grove Agency for Community Development ("Agency"), among other provisions, the City granted the proceeds of the 1997 Section 108 Loan to the Agency for certain eligible purposes ("1997 Cooperation Agreement").

In 1999 the City and Agency desired to modify the terms of the 1997 Cooperation Agreement and with the consent of the Secretary of HUD entered into certain other contracts and instruments, including the 1999 Section 108 Contract (that amended and superseded the 1997 Section 108 Contract) that includes Attachment No. 3 setting forth the modified use of the 108 Loan proceeds for the Harbor Corridor Hotels/Restaurants Development Project and describing the terms of certain additional security provided to HUD, which is set forth in the "Amended and Restated Cooperation Agreement" between the Agency and City ("1999 Cooperation Agreement"). The 1999 108 Loan was evidenced by a promissory note for \$12,900,000.00. Pursuant to the 1999 Cooperation Agreement, the Agency pledged future tax increment funds to the City and granted a security interest in such monies in order for the City to provide that pledge and security interest to HUD for the 1999 Section 108 Loan Contract and Note.

Principal payments ranging from \$460,000 to \$1,200,000 are due annually on August 1 through the year 2016. Interest is due semi-annually on February 1 and August 1. The required annual debt service (principal and interest) payments have

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been paid to date with eligible Community Development Block Grant (CDBG) funds. A balance of \$9,010,000 remains on the loan, as reported in the Comprehensive Annual Financial Report for the year ended June 30, 2007.

In early May 2008 the City received a letter from Paul Webster, HUD Director Financial Management Division, informing the City that, as Borrower, it could participate in a refinancing of and the pending public offering of trust certificates guaranteed under Section 108 of the Housing and Community Development Act of 1974, as amended, to be underwritten by UBS Investment Bank, and Merrill Lynch & Co., and Credit Suisse Securities (USA) LLC scheduled for June 2008 ("2008 HUD Refinancing"). If the City participates in this 2008 HUD Refinancing there will be cost savings to the City in repayment of the 108 Loan, as further explained below.

To participate in this 2008 HUD Refinancing the City will be required to enter into certain public offering documents that as to the City will cause the 1999 Section 108 Contract and 1999 Note to be amended pursuant to certain documents, including: (1) a new "Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974, as Amended, 42 U.S. C. §5308 for Series HUD 2008-A Certificates" ("2008 Section 108 Contract"); (2) a promissory note entitled "Fixed Rate Note for Series 2008-A Certificates" Note No. B-96-MC-06-0505, with the City, as Borrower, and The Bank of New York Mellon, as Registered Holder in the aggregate principal amount of Seven Million Six Hundred Sixty Thousand Dollars ([\$7,660,000], with such principal amount reflecting payments by the City pursuant to the 1999 Section 108 Contract) ("2008 Note"); and (3) related documents and instruments as necessary and appropriate to cause City's participation in the 2008 HUD Refinancing (together, "2008 Section 108 Loan Refinance Documents"). Further, opinions of counsel are required by HUD in connection with this public financing, including the opinion of Stradling Yocca Carlson & Rauth, as Agency Counsel and special counsel to the City, and the opinion of Woodruff, Spradlin & Smart, as City Attorney.

The 1999 Cooperation Agreement will remain in full force and effect and govern the rights and obligations of the City and Agency, including the pledge of and security interest in certain tax increment revenues as additional or other security to HUD for the 108 Loan.

ANALYSIS

The 2008 HUD Refinancing will cause issuance of refunding certificates, the proceeds of which would be used to defease the outstanding trust certificates associated with the original 1997 loan as replaced by the 1999 loan. Those certificates are guaranteed under Section 108 of the Housing and Community Development Act of 1974. The interest rates for the upcoming public offering are expected to be

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significantly lower than those on the City's existing loan and hence, would reduce the City's interest expense.

The current interest rate for the remaining ten years of the original 1997 loan ranges from 5.96% to 7.72%. The projected interest rate on the series HUD 2008-A certificates ranges from 2.62% to 4.51%. The refinance would result in a projected debt service savings of \$857,600 over the remaining life of the loan.

The following are the terms and conditions outlined by HUD for parties interested in participating in the series 2008-A refunding certificates:

- The new promissory note will not be prepayable for the remaining period of the loan, but it can be defeased at any time;
- The City will have to pay issuance costs on the new loan, which will probably be in the range of 0.5% to 1% of the loan amount;
- The terms of the new promissory note must be exactly the same as the existing promissory note; and
- To enable the refinancing, the City must defease the existing note by depositing cash in an account with the Section 108 Trustee sufficient to pay all amounts due on August 1, 2008.

Staff has worked with the Agency Counsel and bond attorneys (Stradling Yocca Carlson & Rauth), and the City Attorney (Woodruff Spradlin & Smart), as well as the City's Financial Advisor (Gardener, Underwood, & Beacon) to review the related documents, and analyze the deal terms.

FINANCIAL IMPACT

The estimated cost for the proposed refinance of the existing Section 108 Loan include approximately \$5,000 in financial advisor fees, \$25,000 in legal fees, and \$38,300 in issuance costs for a total estimated cost of \$68,300. All costs associated with the proposed refinance are eligible to be paid with Community Development Block Grant (CDBG) funds, and funds are available. Importantly, the savings to the City over the remaining life of the 108 loan is projected at \$857,600.

COMMUNITY VISION IMPLEMENTATION

Refinancing of the existing Section 108 Loan assists with several goals in the Strategic Plan by freeing up funds that can be used for the preservation and enhancement of neighborhoods and improvements to the infrastructure.


RECOMMENDATION

Staff recommends that the City Council:

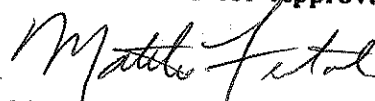
- Approve the participation of the City of Garden Grove in the HUD Series 2008-A certificates to refund the outstanding 1997 Section 108 Loan
- Adopt the attached resolution authorizing the City of Garden Grove to enter into the 2008 HUD Refinancing transaction
- Authorize the City Manager to execute the Contract for Loan Guarantee Assistance, Fixed Rate Note for Series 2008-A Certificates, and all other documents necessary or appropriate to accomplish the transaction, all subject to and with such changes approved by the City Manager, the City Attorney, and Agency Counsel/City Special Counsel.

Staff recommends that the Agency:

- Consent to the 2008 Section 108 Loan Refinance Documents substantially in the form provided by the Secretary of HUD, but subject to and with such changes approved by Agency Counsel/City Special Counsel
- Adopt the attached resolution relating to the 2008 HUD Refinancing, which also authorizes the Agency Director, as and if necessary, to execute documents necessary or appropriate for this 2008 HUD Refinancing.


KINGSLEY OKEREKE
Finance Director

Recommended for Approval


Matthew Feral
City Manager


By: Allison Mills
Senior Project Manager

Attachment 1: Contract for Loan Guarantee Assistance
Attachment 2: Fixed Rate Note for Series 2008-A Certificates
Attachment 3: Model Legal Opinion
Attachment 4: Amended and Restated Master Fiscal Agency Agreement
Attachment 5: Supplement to Trust Agreement Form
Attachment 6: Agency Resolution
Attachment 7: Council Resolution