

Number: AR 17-2
Issue: 1
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Date: 6/1/10

SUBJECT: POLICIES AND PROCEDURES GOVERNING CITY APPROVAL OF DEBT FINANCING AGREEMENTS OR COST REIMBURSEMENT AGREEMENTS BETWEEN THE CITY AND EXTERNAL PARTIES FOR THE FINANCING OF AND / OR THE PAYMENT FOR CAPITAL IMPROVEMENTS

I. PURPOSE

The purpose of this regulation is to establish uniform policies and procedures that apply to agreements between the City of Long Beach (City) and an external entity, either inclusive or exclusive of the issuance of debt, for the construction of capital improvements or facilities that benefit the population of the City whereby the external entity has pledged the proceeds from their capital fundraising efforts or other revenue sources to reimburse the City for actual project costs and / or required debt service.

II. SCOPE

This regulation is applicable to all City departments and offices under the direction of the City Manager. This regulation is also applicable to all entities that have entered into reimbursement agreements for the construction of capital improvements or facilities with the City. In the interest of administrative uniformity, it is recommended that City elected offices and other independent offices and departments of the City comply with these procedures.

III. AMENDMENT

The City Manager may amend or update the policy, procedures and contents in this regulation in accordance with the provisions set forth in Administrative Regulation AR1-1.

IV. POLICY

- A) This policy applies to Debt Financing Agreements and Cost Reimbursement Agreements that are backed by either the General Fund or any other fund that is appropriated annually in accordance with the City Council's Appropriations Ordinance.
- B) When the City enters into either a Debt Financing Agreement or a Cost Reimbursement Agreement with an external entity, and the external entity has pledged the proceeds of their capital campaign or other revenue source to reimburse the City, the entity shall be required to either (a) place the proceeds of the pledged source of funding and / or capital campaign on deposit with the City, or (b) place the proceeds of the pledged source of funding and / or capital campaign into a separate and discrete escrow account, or (c) place the proceeds of the pledged source of funding and / or capital campaign into a separate and discrete trust account. The City shall be named as a beneficiary of trust and escrow accounts.
- C) The City Treasurer shall review, modify as necessary, and approve trust agreements or escrow instructions prior to the opening of such accounts.

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- D) All costs related to the administration of trust or escrow accounts will be the sole responsibility of the external entity.
- E) Funds placed in either a trust or escrow account must allow for the safe investment of those funds using capital preservation as the predominate focus of the investment instruments.
- F) On an annual basis, the Department of Financial Management will review the external entity's financial statements, including the Note Disclosures, to identify any potential internal control weaknesses that could impact the availability of those funds for the intended project.
- G) All Debt Financing Agreements or Cost Reimbursement Agreements entered into by the City shall contain the following language:
 - 1. The external entity agrees to place the proceeds of their pledged source of funding and / or capital campaign on deposit with the City or into a separate and discrete escrow or trust account. Funds can only be withdrawn from these accounts with the written permission of the City and for the limited purposes for which the account was established. In addition, the external entity agrees to name the City as a beneficiary of a trust or escrow account and will be solely responsible for any administrative costs related to these accounts.
 - 2. The external entity agrees that the City Treasurer shall have 30 days to review, modify and approve trust agreements or escrow instructions prior to the opening of such accounts.
 - 3. The external entity agrees to notify the City within 30 days whenever a shortfall is known to exist in the amounts required to be placed into either an escrow or trust account. In the event that such a shortfall is reported, a corrective action plan must be submitted within 90 days of the discovery of the shortfall to the City Manager identifying the steps to be taken to overcome any shortfall.
 - 4. The external party agrees to provide the Department of Financial Management with copies of any statements (such as bank statements) or other documents provided by a trustee or escrow related to either a trust or escrow account within 30 days of their receipt.
 - 5. The external entity agrees to provide a complete set of audited financial statements, inclusive of the notes to the financial statements, as well as a copy

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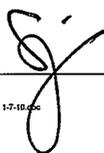
of all audit reports, to both the Department of Financial Management and the City Auditor within 180 days of the end of their fiscal year. If an entity refuses to provide such financial documents, it may result in the suspension of payments or other City obligations specified under applicable operating or other agreements being withheld.

6. The external entity agrees to allow the City Auditor access to all related entity financial records and supporting materials for each year the reimbursement agreement is active and for a period five years after the final payment has been made by the entity.

E) Definitions

1. An **External Entity** is a foundation, corporation or other similar organization.
2. A **Debt Financing Agreement** is defined as an agreement between the City and an external entity whereby the City, or a unit of the City, agrees to issue debt and provide the proceeds to the external entity for use in constructing a capital improvement or facility. In return, the external entity pledges the proceeds from a capital campaign or other revenue source for the repayment of the debt.
3. A **Cost Reimbursement Agreement** is defined as an agreement between the City and an external entity whereby the City agrees to pay for the construction of a capital improvement or facility. In return, the external entity pledges the proceeds from their capital campaign or other revenue source for the repayment of City expenses related to the project.
4. An **Escrow Account** is defined as an account held by a qualified third party from which amounts are delivered to a given party upon the fulfillment of agreed upon conditions.
5. A **Trust Account** is defined as an account held by a trustee and maybe associated with the issuance of debt. Amounts are delivered to a given party upon the fulfillment of agreed upon conditions and with the approval of the City.
6. A **Capital Improvement** means an addition or structure that enhances the value of a property, or a replacement or upgrade that extends the useful life of an asset.
7. **Capital Preservation** is a conservative investment strategy characterized by a desire to avoid risk of loss.

City Manager _____



Date: _____

11-19-10