

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

Garden Grove Agency for Community Development

To:	Matthew Fertal	From:	Chet Yoshizaki
Dept:	Director/City Manager	Dept:	Economic Development
Subject:	SUPPLEMENTAL EDUCATIONAL REVENUE AUGMENTATION FUND (SERAF) PAYMENT FOR FISCAL YEAR 2009-10	Date:	February 23, 2010

OBJECTIVE

The purpose of this report is to request that the City Council of the City of Garden Grove (City Council) and the Garden Grove Agency for Community Development (Agency) each adopt resolutions approving the borrowing of a portion of the Agency's Low and Moderate Income Housing Funds for the purpose of making the payment to the Supplemental Educational Revenue Augmentation Fund (SERAF) required for fiscal year 2009-10 pursuant to California Health and Safety Code Section 33690 (SERAF Legislation).

BACKGROUND/DISCUSSION

As part of the state budget process, the Legislature has mandated that redevelopment agencies make certain payments intended to offset expenses for public education; these payments are referred to as the Supplemental Educational Revenue Augmentation Fund (SERAF) payments. In fiscal year 2009-10, the estimated SERAF shift for all redevelopment agencies is \$1.7 billion; of this, Garden Grove's share is \$7,899,044.

A provision of the SERAF Legislation purports to mitigate the impact of the SERAF payments by authorizing redevelopment agencies to borrow from either this fiscal year's allocation to the agency's Low and Moderate Income Housing Fund, or any monies in that fund, or both, to make the full SERAF payment for fiscal year 2009-10. In fiscal year 2009-10, it is estimated that the Agency will have an unallocated balance of \$11.2 million in its Low and Moderate Income Housing Fund. Thus, the amounts on deposit in the Agency's Low and Moderate Income Housing Fund are sufficient to pay the Agency's entire \$7,899,044 SERAF obligation for fiscal year 2009-10.

A lawsuit has been filed challenging the validity of California Health and Safety Code Sections 33690 and 33690.5 (California Redevelopment

Association v. Genest; referred to herein as the "SERAF Litigation"). In 2009, a lawsuit filed by the California Redevelopment Association was successful in invalidating legislation similar to the SERAF Legislation, which purported to require redevelopment agencies to make payments to educational agencies for fiscal year 2008-09. In the event the SERAF Litigation is not resolved prior to May 10, 2010 (the date the Agency is required to remit the SERAF payment for fiscal year 2009-10), the Agency's SERAF payment should be made under protest, based on the allegations set forth in the complaint filed in the SERAF Litigation, as it may be amended from time to time. In the event the SERAF Litigation results in the invalidation of the SERAF Legislation or otherwise results in a revocation or negation of the Agency's obligation to make the payment required by the SERAF Legislation, the Agency would be relieved of its obligation to make the SERAF payment.

FISCAL IMPACT

In fiscal year 2009-10, there is insufficient money in the Agency's and City's General Fund budgets to make the required SERAF payment. After making the SERAF payment from the Low and Moderate Income Housing Fund, there will be sufficient funds remaining in that fund to carry out the Agency's affordable housing program. Although the Agency has not executed contracts that would be impaired by reducing the amount allocated to the Low and Moderate Income Housing Fund, this SERAF shift will postpone the development of future housing projects.

Section 33690(c)(2)(a) of the California Health and Safety Code requires that funds borrowed from the Agency's Low and Moderate Income Housing Fund to make the SERAF payment for fiscal year 2009-10 must be repaid in full on or before June 30, 2015.

RECOMMENDATION

It is recommended that:

- The City Council adopt the attached Resolution approving the borrowing of a portion of the Agency's Low and Moderate Income Housing Funds for the purpose of making the SERAF payment of \$7,899,044 for fiscal year 2009-10 and authorizing the City Manager to advise the county auditor regarding how the Agency intends to make its 2009-10 SERAF payment.
- The Agency adopt the attached Resolution approving the borrowing of a portion of its Low and Moderate Income Housing Funds for the purpose of paying its SERAF payment of \$7,899,044 for fiscal year 2009-10 and authorizing the Agency Director to advise the county

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auditor regarding how the Agency intends to make it's 2009-10 SERAF payment.



CHET YOSHIZAKI
Economic Development Director



By: Stacy Margolin
Administrative Analyst

Recommended for Approval



Matthew Fertal
Director

Attachment: City Council Resolution and Agency Resolution

mm(h:Staff/SERAF 2009-10 Pymt sr 022310v2.doc)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING THE BORROWING BY THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT OF A PORTION OF THE AGENCY'S LOW AND MODERATE INCOME HOUSING FUNDS FOR THE PURPOSE OF PAYING ITS SUPPLEMENTAL EDUCATIONAL REVENUE AUGMENTATION FUND PAYMENT FOR FISCAL YEAR 2009-10

WHEREAS, as a part of the state budget process, pursuant to California Health and Safety Code Section 33690 (SERAF Legislation), the Legislature has mandated that redevelopment agencies make certain payments intended to offset expenses for public education;

WHEREAS, these payments are referred to as Supplemental Educational Revenue Augmentation Fund (SERAF) payments;

WHEREAS, a provision of the SERAF Legislation, specifically Section 33690(c)(1), purports to mitigate the impact of the SERAF payments by authorizing redevelopment agencies to borrow from either the amount required to be allocated to the Low and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and 33334.6 of the California Health and Safety Code, or any moneys in that fund, or both, to make the full allocation required by the SERAF Legislation;

WHEREAS, the Garden Grove Agency for Community Development (Agency) has established its Low and Moderate Income Housing Fund pursuant to California Health and Safety Code Sections 33334.2, 33334.3, and 33334.6; and

WHEREAS, there are insufficient moneys available to the Agency to make the SERAF payment required by the SERAF Legislation;

WHEREAS, the Agency's Low and Moderate Income Housing Fund has sufficient funds available to carry out the Agency's affordable housing program and to make the payment required by the SERAF Legislation;

WHEREAS, no contracts executed by the Agency will be impaired if the Agency borrows moneys from the Agency's Low and Moderate Income Housing Fund to make the SERAF payment pursuant to the authority provided by Section 33690(c)(1) of the SERAF Legislation;

WHEREAS, the funds borrowed from the Agency's Low and Moderate Income Housing Fund pursuant to Section 33690(c)(1) of the SERAF Legislation are required to be repaid in full on or before June 30, 2015;

WHEREAS, a lawsuit has been filed challenging the validity of California Health and Safety Code Sections 33690 and 33690.5 (California Redevelopment Association v. Genest; referred to herein as the SERAF Litigation); and

WHEREAS, any SERAF payment made by the Agency pursuant to the SERAF Legislation shall be made under protest and only if and to the extent such SERAF payment is required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARDEN GROVE:

1. The Agency is hereby authorized to borrow the entire amount required to be allocated to the Agency's Low and Moderate Income Housing Fund during this fiscal year, pursuant to Sections 33334.2, 33334.3, and 33334.6 of the California Health and Safety Code, and any moneys in that fund, to make the full SERAF payment required by Section 33690(a) of the SERAF Legislation.
2. The City Council of the City of Garden Grove hereby finds and determines as follows:
 - a. There are insufficient moneys available to the Agency to make the SERAF payment required by the SERAF Legislation.
 - b. The Agency's Low and Moderate Income Housing Fund has sufficient funds available to carry out the Agency's affordable housing program and to make the payment required by the SERAF Legislation and no contracts executed by the Agency will be impaired if the Agency borrows moneys from the Agency's Low and Moderate Income Housing Fund to make the SERAF payment pursuant to the authority provided by Section 33690(c)(1) of the SERAF Legislation.
3. The Agency shall repay the borrowed amount, in full, to the Low and Moderate Income Housing Fund on or before June 30, 2015.
4. The City Manager is hereby authorized and directed to report to the County Auditor regarding how the Agency intends to fund the SERAF payment required by the SERAF Legislation, on or before March 1, 2010.
5. If and to the extent required by law, the Agency shall, on or before May 10, 2010, remit an amount equal to the amount determined for the Agency pursuant to California Health and Safety Code Section 33690(a)(2)(J) to the County Auditor for deposit in the County's Supplemental Educational Revenue Augmentation Fund. The Agency's payment of the amounts described in Section 33690(a) of the SERAF Legislation shall be made under protest, based on the allegations set forth in the complaint filed in the SERAF Litigation, as it may be amended from time to time. In the event the SERAF Litigation results in the invalidation of the SERAF Legislation or otherwise results in a revocation or negation of the Agency's obligation to make the payment required by the SERAF Legislation, the Agency shall not make the payment described in this Resolution.

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT

RESOLUTION NO.

A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING THE BORROWING OF A PORTION OF ITS LOW AND MODERATE INCOME HOUSING FUNDS FOR THE PURPOSE OF PAYING ITS SUPPLEMENTAL EDUCATIONAL REVENUE AUGMENTATION FUND PAYMENT FOR FISCAL YEAR 2009-10

WHEREAS, as a part of the state budget process, pursuant to California Health and Safety Code Section 33690 (SERAF Legislation), the Legislature has mandated that redevelopment agencies make certain payments intended to offset expenses for public education;

WHEREAS, these payments are referred to as Supplemental Educational Revenue Augmentation Fund (SERAF) payments;

WHEREAS, a provision of the SERAF Legislation, specifically Section 33690(c)(1), purports to mitigate the impact of the SERAF payments by authorizing redevelopment agencies to borrow from either the amount required to be allocated to the Low and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and 33334.6 of the California Health and Safety Code, or any moneys in that fund, or both, to make the full allocation required by the SERAF Legislation;

WHEREAS, the Garden Grove Agency for Community Development (Agency) has established its Low and Moderate Income Housing Fund pursuant to California Health and Safety Code Sections 33334.2, 33334.3, and 33334.6;

WHEREAS, there are insufficient moneys available to the Agency to make the SERAF payment required by the SERAF Legislation;

WHEREAS, the Agency's Low and Moderate Income Housing Fund has sufficient funds available to carry out the Agency's affordable housing program and to make the payment required by the SERAF Legislation;

WHEREAS, no contracts executed by the Agency will be impaired if the Agency borrows moneys from the Agency's Low and Moderate Income Housing Fund to make the SERAF payment pursuant to the authority provided by Section 33690(c)(1) of the SERAF Legislation;

WHEREAS, the funds borrowed from the Agency's Low and Moderate Income Housing Fund pursuant to Section 33690(c)(1) of the SERAF Legislation are required to be repaid in full on or before June 30, 2015;

WHEREAS, a lawsuit has been filed challenging the validity of California Health and Safety Code Sections 33690 and 33690.5 (California Redevelopment Association v. Genest; referred to herein as the SERAF Litigation); and

WHEREAS, any SERAF payment made by the Agency pursuant to the SERAF Legislation shall be made under protest and only if and to the extent such SERAF payment is required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT:

1. The Agency is hereby authorized to borrow the entire amount required to be allocated to the Agency's Low and Moderate Income Housing Fund during this fiscal year, pursuant to Sections 33334.2, 33334.3, and 33334.6 of the California Health and Safety Code, and any moneys in that fund, to make the full SERAF payment required by Section 33690(a) of the SERAF Legislation.
2. The Agency hereby finds and determines as follows:
 - a. There are insufficient moneys available to the Agency to make the SERAF payment required by the SERAF Legislation.
 - b. The Agency's Low and Moderate Income Housing Fund has sufficient funds available to carry out the Agency's affordable housing program and to make the payment required by the SERAF Legislation and no contracts executed by the Agency will be impaired if the Agency borrows moneys from the Agency's Low and Moderate Income Housing Fund to make the SERAF payment pursuant to the authority provided by Section 33690(c)(1) of the SERAF Legislation.
3. The Agency shall repay the borrowed amount, in full, to the Low and Moderate Income Housing Fund on or before June 30, 2015.
4. The Agency Director is hereby authorized and directed to report to the County Auditor regarding how the Agency intends to fund the SERAF payment required by the SERAF Legislation, on or before March 1, 2010.
5. If and to the extent required by law, the Agency shall, on or before May 10, 2010, remit an amount equal to the amount determined for the Agency pursuant to California Health and Safety Code Section 33690(a)(2)(J) to the County Auditor for deposit in the County's Supplemental Educational Revenue Augmentation Fund. The Agency's payment of the amounts described in Section 33690(a) of the SERAF Legislation shall be made under protest, based on the allegations set forth in the complaint filed in the SERAF Litigation, as it may be amended from time to time. In the event the SERAF Litigation results in the invalidation of the SERAF Legislation or otherwise results in a revocation or negation of the Agency's obligation to make the payment required by the SERAF Legislation, the Agency shall not make the payment described in this Resolution.