



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Julia H. Cooper  
John Aitken

**SUBJECT:** SEE BELOW

**DATE:** August 16, 2021

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|---|---------|
| Approved  | Date    |
|  | 8/19/21 |

**SUBJECT: TAX EQUITY AND FISCAL RESPONSIBILITY ACT HEARING WITH RESPECT TO THE PROPOSED ISSUANCE OF ONE OR MORE ISSUES OF SERIES B SUBORDINATED COMMERCIAL PAPER NOTES**

**RECOMMENDATION**

Hold a Tax Equity and Fiscal Responsibility Act (“TEFRA”) hearing with respect to the proposed issuance by the City of one or more issues of tax-exempt Series B subordinated commercial paper notes (“Series B Notes”) in an aggregate principal amount not to exceed \$600,000,000 pursuant to a plan of finance in order to provide proceeds to pay or reimburse all or a portion of the costs of acquisition, construction, equipping, financing, reconstruction, development, and modification of airport terminal and ancillary facilities that are included in or are consistent with the Airport Master Plan for the Norman Y. Mineta San José International Airport (the “Airport”), and for the City Council to approve the issuance of Series B Notes following the TEFRA Hearing.

**OUTCOME**

Holding a new TEFRA hearing and approving the issuance of the Series B Notes will allow the issuance of tax-exempt Series B Notes for new projects after September 2021. In order to issue tax-exempt Series B Notes, federal tax law requires the City to periodically hold a TEFRA hearing and to approve the issuance of such Series B Notes. The TEFRA hearing provides an opportunity for the public to provide comments on the issuance of Series B Notes and the use of such proceeds, such as to finance projects or to pay capitalized interest. The most recent TEFRA approval for the Series B Notes expires in September 2021, and absent a new TEFRA hearing and approval, the City would not be able to issue any new money Series B Notes after the expiration.

## **BACKGROUND**

### **History of the City’s Airport Commercial Paper Program**

On November 2, 1999, the City Council adopted Resolution No. 69200 approving the implementation of a commercial paper program (the “Airport CP Program”) for the Norman Y. Mineta San José International Airport (the “Airport”), which authorized the issuance of commercial paper notes in an aggregate principal amount of up to \$100 million through a combination of three series of commercial paper notes: Series A (Non-AMT), Series B (AMT<sup>1</sup>), and Series C (Taxable). The Airport CP Program currently is governed by Resolution No. 75693, which was adopted by the City Council on January 11, 2011, in conjunction with the City Council’s authorization of letter of credit and reimbursement agreements for the issuance of letters of credit (“LOCs”) issued by four banks. Although Resolution No. 75693 authorizes the issuance of commercial paper up to a maximum amount of \$600 million outstanding at one time, the City may only issue commercial paper notes up to the amount of credit support provided by banks or other financial institutions, which is currently \$75 million.

The Airport CP Program was established to provide interim financing for Airport capital needs in anticipation of the issuance of Airport revenue bonds that would replace the short-term notes with permanent long-term financing. Airport commercial paper notes are debt obligations secured by a lien and pledge of: (i) advances pursuant to a letter of credit, (ii) proceeds from the sale of such notes, and (iii) Surplus Revenues on a basis subordinate to Airport senior lien debt, which is secured by General Airport Revenues, after the payment of maintenance and operation costs. Surplus Revenues are the Airport’s General Airport Revenues less (i) maintenance and operation expenses, (ii) debt service on the Airport senior lien bonds and (iii) the funding of any reserves established with respect to such senior lien bonds.

Since 1999, the commercial paper notes have been used to initially fund the Airport’s:

- Runway projects,
- Consolidated rental car garage project design efforts,
- Costs associated with the 2002 Refunding Bonds,
- Initial costs associated with the implementation of the requirements under the Federal Aviation and Transportation Security Act,
- Claims Loss Reserve for the Airport’s Owner Controlled Insurance Program for the North Concourse Project,
- Terminal Area Improvement Program,
- Refunding of the Airport Auction Rate Securities, and to
- Fund associated interest costs during construction of these projects.

On August 28, 2018, the City Council approved the issuance of a substitute letter of credit (the “LOC”) for the San José International Airport Commercial Paper Program. Resolution No. 78762 authorized the execution of a Letter of Credit and Reimbursement Agreement with Bank

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<sup>1</sup> AMT – Alternative Minimum Tax; Taxation based on an alternative method of calculating federal income tax under the Internal Revenue Code. Interest on certain private activity bonds is subject to the AMT.

of America, N.A. (“BANA”) and the associated fee letter; a first amendment to the third amended and reinstated issuing and paying agent agreement with U.S. Bank National Association and amended and restated dealer agreements with each commercial paper dealer, Barclays Capital Inc. and Citigroup Global Markets Inc.

The LOC secures up to \$75 million in aggregate principal amount of subordinated commercial paper notes (“CP Notes”) to be issued from time to time by the City, an increase from the aggregate principal amount of \$38 million secured under the prior letter of credit and provided the capacity to finance the proposed terminal area projects at the Airport, for a three-year term ending September 10, 2021.

The City anticipates that BANA will extend the expiration date of the existing LOC from September 10, 2021 to three years after the letter of credit facility closes (September 10, 2024). Finance staff has worked with the City’s Municipal Advisors, PFM Financial Advisors, LLC, who were previously retained in February through a competitive solicitation from the existing Municipal Advisor pool, to assist the City in coordinating renewals of bank credit facilities across the City’s multiple borrowing programs. Bank of America agreed to extend the facility for a price of only 40 basis points or 0.40% and while leaving the current documents in place, the Bank further agreed to eliminate the fee for terminating the facility prior to expiration and has offered to waive the requirement for quarterly financial reporting. The City Attorney’s Office has worked with Orrick as the Airport’s Counsel to assist in documenting this extension.

Per Resolution 78762 approved by the City Council in August 2018, the authorized officers may execute and deliver future amendments to the Reimbursement Agreement and/or the Fee letter without further authorization of the Council, provided that the total compensation payable by the City under the Reimbursement Agreement does not exceed 1.00% per annum of the Stated Amount. As noted above, the current extension has a price of 0.40% that is below 1.00% per annum.

## **ANALYSIS**

### **New TEFRA Hearing**

The Series B Notes are issued as tax-exempt facility private activity bonds for airport facilities, and are subject to certain specific requirements, including the requirement to have a public hearing prior to approval of the issuance of Series B Notes. This requirement was added as part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and is usually referred to as a “TEFRA hearing” and/or “TEFRA approval”.

The prior TEFRA hearing and approval for the Series B Notes expires in September 2021. In order to issue any new money Series B Notes after that expiration (or any other increase in the amount of the outstanding Series B Notes, such as to pay capitalized interest on outstanding Series B Notes), it is necessary to hold a public hearing to allow members of the public to comment on the proposed projects to be financed, and to have a valid TEFRA approval after the

hearing covering the issuance of those new notes. Absent this new TEFRA hearing and approval, the City could continue to roll the Series B Notes (as long as there is no increase in the amount outstanding), but the City cannot issue any new money Series B Notes or otherwise increase the amount outstanding (for example for new projects or to capitalize interest).

### **CONCLUSION**

Approval of the recommendation will allow the issuance of tax-exempt Series B Notes to finance new projects or to pay capitalized interest after September 2021.

### **EVALUATION AND FOLLOW-UP**

This memorandum recommends that City Council hold a TEFRA hearing for the Airport Commercial Paper Program and requires no follow-up to the City Council.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

The City Council will hold a public hearing on August 31, 2021, as required by Section 147(f)(2) of the Internal Revenue Code of 1986, to consider public input concerning the approval of issuance of the Series B Notes for the projects at the Airport consistent with the Airport Master Plan. The Notice of Public Hearing will be published in the San José Post-Record on or about August 17, 2021 announcing the time and location of the public hearing.

### **COORDINATION**

This report has been prepared by the Finance Department in coordination with the City Attorney's Office, Airport Department, and financing team participants.

### **COMMISSION RECOMMENDATION/INPUT**

There is no commission recommendation or input associated with this action.

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### **FISCAL/POLICY ALIGNMENT**

The proposed financing plan is also consistent with the City’s Debt Management Policy which establishes objectives in order to obtain cost-effective access to the capital markets, which includes minimizing debt service and issuance costs; maintaining access to cost-effective borrowing, and ensuring compliance with applicable State and Federal laws.

### **CEQA**

Environmental Impact Report for Norman Y. Mineta San José International Airport Master Plan (Resolution No. 79497 and SCH#2018102020), File No. PP18-103, and addenda thereto.

/s/  
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/s/  
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Director of Aviation

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