

## RESOLUTION NO. 45-2010

*Adopted May 4, 2010*

**AUTHORIZING THE PAYMENT OF \$28.733 MILLION FOR THE SUPPLEMENTAL EDUCATIONAL REVENUE AUGMENTATION FUND (SERAF) FROM THE EXISTING LOW AND MODERATE INCOME HOUSING FUND (LMIHF) PENDING THE SALE OF TAX ALLOCATION BONDS; AND MAKING FINDINGS THAT THERE ARE INSUFFICIENT FUNDS FROM SOURCES OTHER THAN THE LMIHF TO MAKE THE SERAF PAYMENT; ESTABLISHING A REPAYMENT OBLIGATION IN THE AMOUNT OF \$28.733 MILLION TO THE LMIHF**

### BASIS FOR RESOLUTION

1. On July 29, 2009, the California Legislature approved Assembly Bill No. 26, which, among other things, required redevelopment agencies to pay an amount to the Supplemental Educational Revenue Augmentation Fund (SERAF) of the City and County of San Francisco ("City") in fiscal year ("FY") 2009-2010 and FY 2010-2011. Statutes 2009, Chapter 21 (codified at Cal. Health & Safety Code §§ 33690-33690.5) ("SERAF Law"). Under the SERAF Law, the Redevelopment Agency of the City and County of San Francisco ("Agency") must pay \$28.733 million to the SERAF by May 10, 2010 ("SERAF Payment").
2. On March 16, 2010, the Agency Commission approved, by Resolution No. 25-2010, the issuance of an additional \$28 million in tax allocation bonds for the purpose of making the SERAF Payment. On March 23, 2010, the City Board of Supervisors ("Board of Supervisors") approved, by Resolutions Nos. 111-10 and 112-10, the Agency's issuance of bonds and its use of the proceeds for the SERAF Payment.
3. The California Superior Court in the County of Sacramento will soon rule on a class action lawsuit brought by California redevelopment agencies challenging the constitutionality of the SERAF Law. California Redevelopment Association v. Genest, No. 34-2009-80000359 (petition filed Oct. 20, 2009). The Agency has decided to delay issuance of the bonds until after the Superior Court makes a decision and thus avoid the costs of an unnecessary bond issuance in the event that the court strikes down the SERAF Law.
4. If the court upholds the SERAF Law or delays a decision until after May 10, 2010, the Agency will be obligated to make the SERAF Payment by May 10, 2010 and will have to use existing funds to make that payment. Agency staff proposes making the SERAF Payment of \$28.733 million from funds that have already been deposited into the LMIHF.

5. Under Section 33690(b) of the SERAF Law, the Agency may use any funds that are legally available and not legally obligated for other uses. If, however, the Agency uses funds that are allocated to the Low and Moderate Income Housing Fund (LMIHF), the Agency must find “that there are insufficient other moneys to meet the [SERAF payment]” and it must repay the amount to the LMIHF by June 30, 2015. Section 33690(c)(2) of the SERAF Law. If the Agency does not repay the amount by that date, the Agency “shall be required to allocate an additional 5 percent of all taxes that are allocated to that agency pursuant to Section 33670 for low- and moderate-income housing for the remainder of the time the agency receives tax increment pursuant to Section 33670.” Section 33690(c)(2) of the SERAF Law.
6. The Agency acknowledges that it is borrowing \$28.733 million from the LMIHF to make the SERAF Payment and that it is therefore obligated to repay that amount to the LMIHF by June 30, 2015. The Agency further acknowledges that if the \$28.733 million is not repaid to the LMIHF by June 30, 2015, the Agency “shall be required to allocate an additional 5 percent of all taxes that are allocated . . . pursuant to Section 33670 for low- and moderate-income housing for the remainder of the time the agency receives tax increment pursuant to Section 33670.” Section 33690(c)(2) of the SERAF Law.
7. If the Agency makes the SERAF Payment and subsequently issues the bonds authorized by Resolution No. 112-10 of the Board of Supervisors (March 23, 2010), the Agency will immediately repay the \$28.733 million to the LMIHF upon receipt of the bond proceeds from that issuance. Given that a portion of those bond proceeds are funds that would have been allocated to the LMIHF, the Agency will still have a remaining obligation to repay funds to the LMIHF pursuant to Agency Resolution No. 25-2010 (March 16, 2010).
8. Approval of the proposed changes to the budget is not a “Project,” as defined by the California Environmental Quality Act (“CEQA”) Guidelines Sections 15378(b)(4) and 15378(b)(5). The proposed action will not change conditions in any redevelopment project or survey area or at any affordable housing site, will not independently result in a physical change in the environment, and is not subject to environmental review under CEQA.

## **FINDINGS**

9. To make the SERAF Payment, the Agency proposes to use \$28.733 million in funds allocated to the LMIHF. The Agency finds that the use of these funds is necessary because there are insufficient other moneys to meet the SERAF obligation. The Agency’s sources of funding (exclusive of the LMIHF) include tax increment from the following active redevelopment project areas: Transbay, Bayview Hunters Point, South of Market, Yerba Buena Center, Mission Bay South, Mission Bay North, and Visitacion Valley. None of these redevelopment project areas have sufficient resources in their existing budgets to meet their current program objectives and to provide funding to the SERAF Payment. The Hunters Point Shipyard Redevelopment Project Area is not yet providing any tax increment to the Agency.

## RESOLUTION

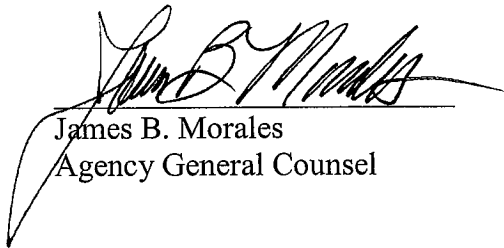
**ACCORDINGLY, IT IS RESOLVED** by the Redevelopment Agency of the City and County of San Francisco (the "Agency") that it does hereby authorize the borrowing of \$28.733 million from the Low and Moderate Income Housing Fund (LMIHF) for payment to the Supplemental Educational Revenue Augmentation Fund (SERAF) by May 10, 2010; and

**BE IT FURTHER RESOLVED** by the Agency that it is obligated to repay \$28.733 million to the LMIHF by June 30, 2015 or else it will be required to allocate an additional five percent (5%) of all taxes that are allocated pursuant to Section 33670 of the Law for low- and moderate-income housing for the remainder of the time the Agency receives tax revenue pursuant to Section 33670; and

**BE IT FURTHER RESOLVED** by the Agency that, if the Agency issues the bonds authorized by Board of Supervisors' Resolution No. 112-10 (March 23, 2010), it will immediately repay \$28.733 million to the LMIHF when the Agency receives the bond proceeds from that issuance; and

**BE IT FURTHER RESOLVED** by the Agency that this Resolution shall be null and void if the court decision in California Redevelopment Association v. Genest invalidates the state legislation requiring the SERAF Payment.

**APPROVED AS TO FORM:**



James B. Morales  
Agency General Counsel