



Board of Supervisors Memorandum

July 2, 2019

Authorization to Loan \$1,100,000.00 to the City of South Tucson

Background

Pima County and the City of South Tucson (the "City") are both named defendants in a class action lawsuit, *Valenzuela, et al. v. Pima County, et al.*, Case No. TX2014-000213, relating to a claim for refund of taxes levied by the City of South Tucson in tax years 2011, 2012 and 2013. At the July 2, 2019 Board of Supervisors meeting, the Board will consider in Executive Session whether to approve a proposed settlement of the litigation (the "Settlement"). If the Board approves the settlement agreement, and the court later approves the settlement, a payment will need to be made to the plaintiffs.

In order to enable the City to make the payment to settle the case against both the City and the County, the County would advance the \$1,100,000 payment to the plaintiffs on behalf of the City. The City would repay the County over a period of just over 19 years under the terms of a promissory note substantially in the form attached (the "Note"). The Note would be dated as of the date the Settlement payment is made by Pima County.

The City would execute the Note once the Settlement is approved by all parties and the Court. Repayment of the note would be in 20 installments, with the first payment of interest-only due October 1, 2019 and subsequent annual payments of \$80,234.36 principal and interest through October 1, 2038. Interest accrues at 3.5 percent, approximately one percent above the current investment rates for the County with the State's Treasurer. The total principal and interest payments over the term of the Note would be \$1,524,452.80, plus any interest due on the Note from the date of the Settlement payment through October 1, 2019, the date of the first loan service payment. Both Pima County and the City of South Tucson would benefit from settling the Lawsuit using the funds loaned to the City by the County.

Recommendation

I recommend the Board of Supervisors direct the Finance and Risk Management Director to make the Settlement payment on behalf of the City of South Tucson and to accept the 2019 Promissory Note following the court's approval of the Settlement agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Huckelberry".

C.H. Huckelberry
County Administrator

CHH/anc – June 26, 2019

c: Tom Burke, Deputy County Administrator for Administration
Michelle Campagne, Director, Finance and Risk Management

**City of South Tucson
2019 PROMISSORY NOTE
To Pima County**

1. Background and Purpose.

- 1.1. Pima County (“**County**”) and the City of South Tucson (“**City**”) were sued by certain named plaintiffs in an action captioned *Valenzuela, et al. v. Pima County, et al.*, Case No. TX2014-000213 (the “**Lawsuit**”).
- 1.2. The Lawsuit was certified as a class action on behalf of all real property owners and taxpayers in the taxing jurisdiction of City, who timely paid real property taxes for the 2011, 2012 or 2013 tax years, subject to certain exclusions.
- 1.3. The Lawsuit concerns secondary property taxes levied by City for tax years 2011, 2012 and 2013.
- 1.4. The parties to the Lawsuit are seeking to settle the Lawsuit. The settlement under discussion will require City to deposit \$1,100,000 with plaintiffs’ counsel for distribution to the class members. City does not have the necessary funds.
- 1.5. The Board of Supervisors of the County has determined that it is in the best interests of the County and City, and the taxpayers of both jurisdictions, to loan City the funds needed for the settlement.

2. Definitions. The following capitalized terms, as used in this document, have the meanings assigned below:

- 2.1. **Payment Date:** October 15th of each year.
- 2.2. **Closing Date:** the date that Pima County, pursuant to the Settlement Agreement, pays to plaintiffs’ counsel the Loan.
- 2.3. **Interest Rate:** 3.5% per annum.
- 2.4. **Loan:** \$1,100,000, to be paid by Pima County to plaintiffs’ counsel under the Settlement Agreement.
- 2.5. **Maturity Date:** October 15, 2038.
- 2.6. **Note:** this Promissory Note.
- 2.7. **Settlement Agreement:** that certain Settlement Agreement, including all amendments, among City, County, and plaintiffs, settling the Lawsuit.

3. Settlement. After the Settlement Agreement is finalized and executed by the parties, and is preliminarily approved by the court in the Lawsuit, County will pay to plaintiffs’ counsel the Loan proceeds on behalf of City, as and when the Settlement Agreement provides.-

4. **Promise to Pay.** In consideration of the above payment by County, City hereby unconditionally promises to pay to County the principal of the Loan, together with interest thereon as provided in this Note.
5. **Interest.** The outstanding principal amount of the Loan will bear interest at the Interest Rate from the Closing Date until the Loan is paid in full, whether at maturity, upon acceleration, by prepayment, or otherwise. Interest will be computed on the basis of 365 or 366 days per year, as the case may be, and the actual number of days elapsed. Interest will accrue for the Closing Date, and will not accrue for the day on which it is paid.
6. **Principal and Interest Payments.** On the first Payment Date following the Closing Date, City will pay to County the interest that has accrued since the Closing Date. On each Payment Date thereafter, and subject to the provisions of Sections 8 and 10 below regarding prepayment of the principal, City will pay to County the principal and accrued interest on the Loan in 20 equal annual installments to fully amortize the Loan through the Maturity Date, *provided* that all amounts outstanding under this Note must be paid on or before the Maturity Date. An amortization schedule is attached as Exhibit A.
 - 6.1. City will make the payments in lawful money of the United States of America no later than 12:00 PM on each Payment Date by wire transfer of immediately available funds to County's account at a bank specified by County in writing to City from time to time.
 - 6.2. Whenever a Payment Date falls on a day that is not a normal business day, City will make the payment no later than the next succeeding business day.
 - 6.3. After the Closing Date, the Director of Pima County's Finance and Risk Management Department will issue a calculation of interest from the Closing Date to and including October 15, 2019.
7. **Application of Payments.** Acceptance by County of any payment in an amount less than the amount then due under this Note will not constitute an accord and satisfaction, but merely a payment on account. County will apply all payments made under this Note in the following order of priority: (a) first, to any late charges, costs, fees, or other amounts then due and payable to County under this Note other than principal and interest on the Loan; (b) second, to accrued interest, and (c) third, to the outstanding principal amount of the Loan.
8. **Reduction of Principal.** If any portion of the Loan is repaid to County by plaintiffs' counsel under the Settlement Agreement, County will apply that amount to the outstanding principal balance of the Loan, and the Director of Pima County's Finance and Risk Management Department will issue an amended amortization schedule.
9. **Late Charge & Overdue Interest Rate.** City recognizes that, should any payment required by this Note not be paid when due, County will incur extra expenses for the handling of delinquent payments, the exact amount of which is impossible to ascertain, but that a charge equal to 10% of the amount due is a fair approximation of those expenses. City therefore agrees to pay a late payment fee of 10% of any payment that is not delivered to County within five (5) business days after the date due. In addition, overdue amounts owned under this Note will bear interest from the date due until paid at a rate that is 2% above the Pool 500 LGIP rate at the time of default.

10. **Optional Prepayments.** City may voluntarily prepay all or any portion of the principal balance of the Loan at any time, and from time to time, without any prepayment penalty, City or expense of any kind whatsoever. All such prepayments will be applied in the manner provided in Section 7 above, and the amount applied to the payment of principal will be applied in the inverse order of maturity.
11. **Collection Procedures, Waiver of Notice.** City hereby waives grace, notice, notice of default, notice of intent to accelerate, notice of acceleration, protest, demand, presentment for payment and diligence in the collection of this Note, and in the filing of suit on this Note.
12. **Default.** If City fails to make any payment then due and payable to County under this Note, in accordance with the terms of this Note, on or before five (5) business days after City's receipt of written notice from County of such non-payment, the outstanding principal amount of the Loan, together with accrued interest and all other amounts outstanding under this Note, will, at the option of County, be immediately due and payable.
13. **Delay in Exercising Rights.** No delay or omission on the part of County in exercising any right under this Note will operate as a waiver of such right or any other rights. To the extent permitted by law, City waives the right in any action under this Note to assert that such action was not commenced within the time required by law. No failure by County to insist upon, nor any election by County not to insist upon, strict performance by City of any of any obligation under this Note will estop County from insisting on such strict performance in the future.
14. **Costs of Enforcement.** City agrees to pay to County on demand all reasonable expenses or other costs, including attorneys' fees and expert witness fees, incurred by County in connection with the successful enforcement or collection against City of any amount due under this Note.
15. **Payments and Notices.** All payments (unless arrangements are made for electronic payments) and notices required or permitted to be given under this Note must be in writing and delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the relevant Party at the address set forth below:

Payments to County:
Pima County Finance Revenue Division
33 N. Stone Ave.
6th floor, Mail Stop DT-BAB6-404
Tucson, AZ 85701

All other Notices to County:
Pima County Administrator
Office of the Pima County Administrator
130 W. Congress St.
Tucson, AZ 85701

With a copy to:
Chief Civil Deputy
Pima County Attorney's Office
32 N. Stone Ave.

Tucson, AZ 85701

To City:

With a copy to:

Either Party may change its address for notice purposes by giving notice of the address change to the other Party in accordance with this section.

16. **Binding on Successors and Assigns.** The covenants and agreements contained in this Note bind the successors and assigns of the parties.

17. **Severability.** If any provision of this Note is held to be invalid, illegal or unenforceable in any respect, this Note will be construed as not containing that provision, and all other provisions of this Note will remain in full force and effect, and to this end the provisions of this Note are declared to be severable.

[COUNTY AND City OF SOUTH TUCSON SIGNATURE BLOCKS]

Exhibit A (see below)

Exhibit A

City of South Tucson						
\$1,100,000.00 Loan Amortization						
Interest Rate of 3.5%						
Payment No.	Payment Date	Start Balance	Payment Amount	Capital Paid	Interest Paid	Remaining Balance
1	15-Oct-2019	\$1,100,000.00	TBD ¹	0	TBD ¹	\$1,100,000.00
2	15-Oct-2020	\$1,100,000.00	\$80,234.36	\$41,734.36	\$38,500.00	\$1,058,265.64
3	15-Oct-2021	\$1,058,265.64	\$80,234.36	\$43,195.06	\$37,039.30	\$1,015,070.58
4	15-Oct-2022	\$1,015,070.58	\$80,234.36	\$44,706.89	\$35,527.47	\$970,363.69
5	15-Oct-2023	\$970,363.69	\$80,234.36	\$46,271.63	\$33,962.73	\$924,092.07
6	15-Oct-2024	\$924,092.07	\$80,234.36	\$47,891.14	\$32,343.22	\$876,200.93
7	15-Oct-2025	\$876,200.93	\$80,234.36	\$49,567.33	\$30,667.03	\$826,633.61
8	15-Oct-2026	\$826,633.61	\$80,234.36	\$51,302.18	\$28,932.18	\$775,331.42
9	15-Oct-2027	\$775,331.42	\$80,234.36	\$53,097.76	\$27,136.60	\$722,233.67
10	15-Oct-2028	\$722,233.67	\$80,234.36	\$54,956.18	\$25,278.18	\$667,277.49
11	15-Oct-2029	\$667,277.49	\$80,234.36	\$56,879.65	\$23,354.71	\$610,397.84
12	15-Oct-2030	\$610,397.84	\$80,234.36	\$58,870.43	\$21,363.92	\$551,527.41
13	15-Oct-2031	\$551,527.41	\$80,234.36	\$60,930.90	\$19,303.46	\$490,596.51
14	15-Oct-2032	\$490,596.51	\$80,234.36	\$63,063.48	\$17,170.88	\$427,533.03
15	15-Oct-2033	\$427,533.03	\$80,234.36	\$65,270.70	\$14,963.66	\$362,262.33
16	15-Oct-2034	\$362,262.33	\$80,234.36	\$67,555.18	\$12,679.18	\$294,707.15
17	15-Oct-2035	\$294,707.15	\$80,234.36	\$69,919.61	\$10,314.75	\$224,787.54
18	15-Oct-2036	\$224,787.54	\$80,234.36	\$72,366.79	\$7,867.56	\$152,420.75
19	15-Oct-2037	\$152,420.75	\$80,234.36	\$74,899.63	\$5,334.73	\$77,521.12
20	15-Oct-2038	\$77,521.12	\$80,234.36	\$77,521.12	\$2,713.24	\$0.00

¹ The amount of interest due for the first payment will be determined after the Closing Date.