



Agenda Item No: 5.a
Meeting Date: August 21, 2023

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Economic Development and Innovation

Prepared by: Micah Hinkle,
Director of Economic Development

City Manager Approval: 

TOPIC: TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982 (TEFRA) PUBLIC HEARING FOR TAX-EXEMPT FINANCING - THE SHINING STAR FOUNDATION

SUBJECT: RESOLUTION APPROVING ISSUANCE OF REVENUE OBLIGATIONS BY THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (CEDA) FOR THE PURPOSE OF FINANCING, REFINANCING AND/OR REIMBURSING THE COST OF ACQUISITION, CONSTRUCTION, INSTALLATION, EQUIPPING AND FURNISHING OF CERTAIN FACILITIES FOR THE BENEFIT OF THE SHINING STAR FOUNDATION AND OTHER MATTERS RELATING THERETO HEREIN SPECIFIED PURSUANT TO THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982 (TEFRA)

RECOMMENDATION:

- 1. Conduct a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986 to receive comments relating to the issuance of the Obligations by CEDA to finance, refinance and/or reimburse the cost of the Project.
- 2. Adopt the resolution approving the issuance of the Obligations by CEDA to finance, refinance and/or reimburse the cost of the Project for the benefit of the Borrower.

BACKGROUND:

CEDA and Star Academy (borrower), asked the City to facilitate the financing and refinancing of their facilities, located in the City of San Rafael. This assistance includes holding a public hearing under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The reason for pursuing financing in this manner is to allow the borrower to reduce its borrowing cost in owning its facilities and to preserve critical funds for serving the borrower's clients. The City used this process for other requests focused on affordable housing projects (855 C St. & 55 Fairfax St.). This process does not expose the City to financial risk.

The TEFRA process requires the borrower to use a third party to issue bonds. The borrower is working with the California Enterprise Development Authority (CEDA), a joint exercise of powers authority (JPA) established by the California Association for Local Economic Development (CALED) to issue tax-exempt and taxable conduit revenue bonds to fund commercial and industrial development projects that provide a public benefit and serve residents within member jurisdictions. Cities and counties in California utilize

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Disposition: _____

joint powers authorities primarily for economies of scale, to access specialized transaction knowledge and resources, and to avoid using valuable local staff time on these types of transactions. More than 250 cities and counties are associate members of CEDA.

BORROWER:

The borrower, which operates under the name Star Academy, was founded in 1991 by two families determined to provide their children with the best education possible. The borrower is a non-public and non-profit school that is a recognized leader in the Bay Area in educating students with learning differences. The borrower serves students with a variety of complex learning differences that make it difficult for them to thrive in a traditional classroom setting. Many students arrive at the school emotionally fragile because of school experiences that have not been successful, leaving them frustrated, isolated, and believing they are not capable of learning.

Each student's program is uniquely tailored to their specific needs. Students participate in specialized classroom learning and have access to specialists in multi-sensory language arts, speech, math, occupational therapy, and emotional wellness. In an average week, each student works with up to 10 educators and specialists. Providing students with focused and individualized support accelerates their learning, and, as a result, they experience significant academic success, often for the first time. Being in a nurturing and supportive environment also allows students to feel safe and part of a caring community.

The borrower is fully accredited by the Western Association of Schools and Colleges, and its academic program is based on California Department of Education content standards. The student population includes students whose family's pay tuition and students placed by their public school district as part of the Individualized Education Program (IEP).

THE PROJECT:

The borrower intends to use the proceeds to (a) finance, refinance and/or reimburse the borrower for the cost of acquiring, constructing, renovating, remodeling, installing, equipping, and furnishing the facilities located at (i) 171 and 181 Carlos Drive, San Rafael, California 94903, consisting of two commercial buildings with approximately 13,691 square feet of space in the approximate amount of \$1,700,000 and (ii) the rehabilitation and equipping of the real property and improvements located at 4470 Redwood Highway, San Rafael, California 94903, consisting of the borrower's main building with classrooms, a gymnasium, teaching kitchen and offices for specialists in the approximate amount of \$300,000, and (b) pay certain financing costs and costs of issuance in connection with the issuance of the bonds. The borrower will own and operate the facilities in connection with its public benefit purpose of education for students with learning differences.

ANALYSIS:

The public TEFRA hearing would fulfill the requirements of the federal law and the requirements of CEDA. The City Council's role is to conduct the public hearing and act on the attached resolution has no direct impact on the City or the subject property in that:

1. The bonds will not constitute a debt or liability to the City. The bond payments will be made by the borrower using income generated by the project.
2. As noted above, for all or a portion of the bonds to qualify as tax-exempt bonds, the City must conduct the public hearing as an accommodation to the CEDA. The City will not be the issuer of the bonds, nor will it be responsible for interest payments on the bonds. Therefore, the City's role in conducting the public hearing is perfunctory.

3. The issuance of the bonds would be used to finance needed capital improvements to the subject property.

4. The action on this request qualifies for an exemption from the provisions of the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15061(b). This CEQA provision states that as a “general rule,” CEQA applies only to projects and actions which have the potential to cause a significant, physical environmental effect on the environment.

After holding the TEFRA hearing and adopting the required resolution, no other participation or activity will be required of the City with respect to issuance of the bonds.

COMMUNITY OUTREACH:

A notice was posted 72 hours prior to the public hearing on the City’s and CEDA’s websites, consistent with Internal Revenue Service requirements. A copy of the notice is attached (Attachment 2).

FISCAL IMPACT:

The obligations are to be issued by CEDA. The City will have no obligation, liability or responsibility for the project or the repayment of the obligations. All financing documents with respect to the issuance of the obligations will contain clear disclaimers that the obligations are not obligations of the City or the State of California.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the attached resolution as recommended by staff;
2. Adopt the attached resolution with modifications;
3. Continue the matter and direct staff to return with more information; or
4. Deny the request.

RECOMMENDED ACTION:

It is recommended that the City Council:

1. Conduct a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986 to receive comments relating to the issuance of the obligations by CEDA to finance, refinance and/or reimburse the cost of the project.
2. Adopt the resolution approving the issuance of the obligations by CEDA to finance, refinance and/or reimburse the cost of the project for the benefit of the borrower.

ATTACHMENTS:

1. Resolution
2. Public Hearing Notice

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE BY THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY OF NOT TO EXCEED \$2,000,000 AGGREGATE PRINCIPAL AMOUNT OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY'S REVENUE OBLIGATIONS FOR THE PURPOSE OF FINANCING, REFINANCING AND/OR REIMBURSING THE COST OF ACQUISITION, CONSTRUCTION, INSTALLATION, EQUIPPING AND FURNISHING OF CERTAIN FACILITIES FOR THE BENEFIT OF THE SHINING STAR FOUNDATION AND OTHER MATTERS RELATING THERETO HEREIN SPECIFIED

WHEREAS, The Shining Star Foundation, a California nonprofit public benefit corporation and an organization described in Section 501(c)(3) of the Code (the "Borrower"), has requested that the California Enterprise Development Authority (the "Authority") to issue, from time to time, pursuant to a plan of finance, of one or more series of its tax-exempt bonds, notes, or other evidence of indebtedness in an amount not to exceed \$2,000,000 (the "Obligations") for the benefit of the Borrower pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State (commencing with Section 6500) (the "Act"), to (a) finance, refinance and/or reimburse the Borrower for the cost of acquiring, constructing, renovating, remodeling, installing, equipping and furnishing the facilities located at (i) 171 and 181 Carlos Drive, San Rafael, California 94903, consisting of two commercial buildings with approximately 13,691 square feet of space in the approximate amount of \$1,700,000 and (ii) the rehabilitation and equipping of the real property and improvements located at 4470 Redwood Highway, San Rafael, California 94903, consisting of the Borrower's main building with classrooms, a gymnasium, teaching kitchen and offices for specialists in the approximate amount of \$300,000 (collectively, the "Facilities"), and (b) pay certain financing costs and costs of issuance in connection with the issuance of the Obligations (collectively, the "Project"); and

WHEREAS, pursuant to Section 147(f) of the Internal Revenue Code of 1986 (the "Code"), the issuance of the Obligations by the Authority must be approved by the City Council of the City of San Rafael (the "City") because the Project is to be located within the territorial limits of the City; and

WHEREAS, the City Council of the City (the "City Council") is the elected legislative body of the City and is one of the "applicable elected representatives" required to approve the issuance of the Obligations under Section 147(f) of the Code; and

WHEREAS, the Authority has requested that the City Council approve the issuance of the Obligations by the Authority in order to satisfy the public approval requirement of Section 147(f) of the Code; and

WHEREAS, pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the issuance of the Obligations, and now desires to approve the issuance of the Obligations by the Authority;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Rafael as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. The City Council hereby approves the issuance of the Obligations by the Authority, including but not limited to Obligations issued as part of a plan to finance the Facilities described herein. It is the purpose and intent of the City Council that this resolution constitute approval of the issuance of the Obligations by the Authority, for the purposes of Section 147(f) of the Code by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Project is to be located, in accordance with said Section 147(f) and the Act. This resolution shall also constitute the approval of the issuance of the Obligations by the Authority within the meaning of the Joint Exercise of Powers Act, comprising Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State of California.

Section 3. The City shall not bear any responsibility or liability for the issuance of the Obligations, the tax-exempt status of the Obligations, the repayment of the Obligations or any other matter related to the Obligations.

Section 4. The adoption of this Resolution shall not obligate the City or any department thereof to (i) provide any financing with respect to the Facilities; (ii) approve any application or request for or take any other action in connection with any planning approval, permit, or other action necessary with respect to the Facilities; (iii) make any contribution or advance any funds whatsoever to the Authority or the Borrower; or (iv) take any further action with respect to the Authority or its membership therein.

Section 5. All actions heretofore taken by the officers, employees, and agents of the City with respect to the approval of the issuance of the Obligations are hereby approved, confirmed, and ratified, and the officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they or special counsel may deem necessary or advisable in order to carry out, give effect to, and comply with the terms and intent of this resolution and the financing transaction approved hereby.

Section 6. This resolution shall take effect immediately upon its adoption.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 21st day of August 2023, by the following vote, to wit:

AYES: **Councilmembers:**
NOES: **Councilmembers:**
ABSENT: **Councilmembers:**

Lindsay Lara, City Clerk

NOTICE OF PUBLIC HEARING

PURSUANT TO SECTION 147(f) of the Internal Revenue Code of 1986 NOTICE IS HEREBY GIVEN that the City Council of the City of San Rafael will be holding a PUBLIC HEARING under the Tax and Equity Fiscal Responsibility Act (“TEFRA”).

- WHERE: San Rafael City Hall – Council Chambers
1400 Fifth Avenue, San Rafael, California 94901
- WHEN: Monday, August 21, 2023, at the hour of 7:00 p.m. or as soon thereafter as the matter is reached on the agenda
- PURPOSE: To hear and consider information concerning the issuance by the California Enterprise Development Authority (the “Issuer”), from time to time, pursuant to a plan of finance, of one or more series of tax-exempt revenue obligations pursuant to Section 145 of the Internal Revenue Code of 1986, as amended (the “Code”) in an aggregate principal amount not to exceed \$2,000,000 (the “Obligations”) for the benefit of The Shining Star Foundation, a nonprofit public benefit corporation, duly organized and existing under the laws of the State of California (the “State”), and/or a related entity (the “Borrower”). The Issuer will loan the proceeds of the Obligations to the Borrower pursuant to one or more loan agreements or amendment to a loan agreement (collectively, the “Loan Agreement”). The proceeds of the Obligations loaned to the Borrower will be applied to: (a) finance, refinance and/or reimburse the Borrower for the cost of acquiring, constructing, renovating, remodeling, installing, equipping and furnishing the facilities located at (i) 171 and 181 Carlos Drive, San Rafael, California 94903, consisting of two commercial buildings with approximately 13,691 square feet of space in the approximate amount of \$1,700,000 and (ii) the rehabilitation and equipping of the real property and improvements located at 4470 Redwood Highway, San Rafael, California 94903, consisting of the Borrower’s main building with classrooms, a gymnasium, teaching kitchen and offices for specialists in the approximate amount of \$300,000 (collectively, the “Facilities”), and (b) pay certain financing costs and costs of issuance in connection with the issuance of the Obligations. The Borrower is an organization described in Section 501(c)(3) of the Code and will own and operate the Facilities by the Borrower in connection with its educational mission of providing an intensive, individualized academic program for students with learning differences, with a commitment to helping them achieve their full potential and lead gratifying productive lives.

Neither the faith and credit nor the taxing power of the City, the State, or any other political corporation, subdivision or agency of the State is pledged to the payment of the principal of, premium, if any, or interest on, the Obligations, nor shall the City, the State or any other political corporation,

subdivision or agency of the State be liable or obligated to pay the principal of, premium, if any, or interest on, the Obligations.

The Agenda for this meeting and documents included in the Agenda for this hearing will be published at least 72 hours prior to the meeting and can be accessed by viewing the City's Agenda website, <https://www.cityofsanrafael.org/city-council-meetings/>.

All persons interested in this matter should appear at the August 21, 2023 City Council meeting. If you cannot attend the City Council meeting, comments can be submitted by email at cityclerks@cityofsanrafael.org. Questions should be directed to Micah Hinkle, Director of Economic Development and Innovation at micah.hinkle@cityofsanrafael.org or at 415-485-3460.

Lindsay Lara
City Clerk