

5. Authorizing the Chief Financial Officer to combine and leverage the previously approved \$5 million from CEC loan and EECBG funds authorized by O-19981 with the QECB fund allocation for a Broad Spectrum Street Light Conversion Program.
6. Authorizing the City Comptroller to transfer \$13.1 million of QECB funds into FY 2011 Capital Improvement Program budget thereby adding \$13.1 million to CIP A-BT.00003, City-Wide Energy Improvement Projects, to perform broad spectrum improvements of street lighting.

Financing Related Actions:

7. Authorizing the Chief Financial Officer to accept and utilize the City's QECB allocation to be expended in an amount not to exceed \$13.1 million to fund a portion of the Broad Spectrum Street Light Conversion Program in the City and fund related costs of issuance.
8. Authorizing the execution and delivery of all QECB financing documents and approving related actions in connection therewith.
9. Authorizing the City Attorney to appoint Orrick, Herrington & Sutcliff LLP as Special Counsel for the City in connection with the QECBs, and pay an amount not to exceed \$42,500, provided the fees payable to Special Counsel will be contingent upon the closing of the QECBs and paid out of the proceeds from QECB funds.

EXECUTIVE SUMMARY:

I. Background

QECBs are taxable tax credit bonds limited solely to fund qualified energy conservation projects. The QECB program was first introduced by Congress in October 2008 and further expanded in February 2009 through the American Recovery and Reinvestment Act of 2009 ("ARRA"). On March 18, 2010, the Hiring Incentive to Restore Employment Act ("HIRE Act") was signed into law, allowing QECBs to be issued with a direct payment option whereby an issuer would receive a federal subsidy in an amount equal to 70% of the applicable tax credit rate published by the U.S. Treasury. ARRA provided that the State of California would receive approximately \$382 million in QECB allocation of which the City received approximately \$13.1 million.

On February 24, 2010, the City Council approved Resolution R-305594 authorizing the City to apply for state or federal funding to expand the use of Broad Spectrum Street Lighting. Upon applying to utilize the City's QECB allocation, approval was granted specifically for use on Broad Spectrum Street Lighting by the California Debt Limit Allocation Committee ("CDLAC"), the state agency overseeing the allocation of QECB issuances. CDLAC, which is tasked with ensuring prompt progression towards QECB issuance, has the authority to reallocate existing allocations to other local agencies if not utilized in a timely manner. In accordance with CDLAC requirements, the City has provided periodic progress reports to the State in order to retain its allocation. As of September 7, 2010, CDLAC staff has confirmed that the City will maintain its \$13.1 million allocation.

FISCAL CONSIDERATIONS:

I. Financing Plan & Structure

Staff is seeking City Council authorization to utilize the City's QECB allocation towards the Program in an amount not to exceed \$13.1 million, to approve the required QECB documents, and to take all other necessary actions related to the sale of QECBs. It is anticipated that the QECB documents will be docketed for City Council action in mid-October.

The firm Banc of America Leasing & Capital ("Purchaser") was identified as the direct purchaser for QECBs through a competitive process. The City issued a Request for Proposals ("RFP") on April 8, 2010. The RFP was sent to 79 firms including underwriting firms, banks, and municipal fund managers -- five proposals were received. A direct private placement is recommended versus a public sale due to the unique nature of these tax credit bonds, including their small size and the relative lack of familiarity within the investment community; and favorable financing terms and lower costs of issuance presenting the lowest possible borrowing costs to the City.

The QECBs will be structured under a Taxable Qualified Energy Conservation Equipment Lease/Purchase Agreement ("Agreement") where, upon closing, proceeds will be deposited into an acquisition fund and applied toward the Program. The repayment term for the QECBs will be 17 years; the projected useful life of the lighting installations is 20 years.

II. Interest Rate and Projected Lease Payments

Following City Council approval, a fixed rate of interest will be locked by May 2011, the expected time when the Program will begin utilizing QECB funds. The extended rate lock-in date will: (1) demonstrate to CDLAC progress on utilizing the City's QECB allocation while still allowing the City to access funds when needed, thus reducing the negative arbitrage created when monies are deposited into project funds in advance of being spent; and (2) provide flexibility to lock-in a rate prior to May 2011 should market conditions deem favorable. The interest rate will be based on the 10 Year US Treasury Interest Rate Swap plus 2.65%. As of September 7, 2010, this results in a 5.26% taxable interest rate ("Taxable QECB Rate").

Upon executing the financing, the City will receive a direct cash subsidy payment semi-annually from the Treasury equal to 70% of the tax credit rate published by the Treasury ("QECB Tax Credit Rate") as provided by the HIRE Act, and as mentioned above. As of September 7, 2010, this results in a direct cash subsidy payment of 3.44%.

Accounting for the direct cash subsidy, the resulting Net Effective Rate (the Taxable QECB Rate less the QECB Tax Credit Rate) on September 7, 2010 would be and estimated 1.82%. Based on the Net Effective Rate of 1.82% for illustration, annual lease payments over the 17-year term would be \$1.1 million when factoring in the subsidy amount. Lease payments will not commence until the City receives beneficial use of the equipment.

QECB lease payments will be borne entirely through street light energy and maintenance cost savings estimated at \$1.8 million for approximately 28,700 street lights to be converted through

