

DATE: August 4, 2010

TO: Mayor and City Council Members

FROM: Intergovernmental Affairs and Economic Development

SUBJECT: RESOLUTION NO. 8715 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOLSOM APPROVING THE ISSUANCE BY THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY OF RECOVERY ZONE FACILITY REVENUE BONDS FOR THE SUNEDISON CALIFORNIA PORTFOLIO

BACKGROUND/ANALYSIS:

In 2007, Kohl's Corporation (owners of Kohl's Department Stores) initiated a program to convert Kohl's California stores to solar energy usage. Kohl's has contracted with SunEdison, a Beltsville, Maryland solar energy company, to install and operate the solar energy systems at Kohl's stores. SunEdison is North America's largest solar energy provider. While this program began a few years ago, the sluggish economy and stringent credit conditions have slowed the conversion process.

Under its contract with Kohl's, SunEdison will own the solar energy systems and sell electricity back to Kohl's under a 20-year power purchase agreement. About 1,200 solar panels making up a 420 kilowatt (kW) system will be installed on the roof of the Kohl's Department Store. This system is expected to produce about 630,000 kilowatt hours (kWh) of energy annually or enough to power about 100 homes in a year. Energy savings for the Kohl's Department Store are expected to be in the 5-10% range. The system is estimated to cost between \$1-2 million. Assuming no unusual delays, SunEdison expects the system to be operating by the first quarter of 2011.

SunEdison is proposing to finance installation of the solar energy systems here in this region through Recovery Zone Facility Revenue (RZFR) Bonds established by the American Recovery and Reinvestment Act (ARRA). California Statewide Communities Development Authority (CSCDA) will be the issuer of the bonds.¹ As explained further below, an authorizing resolution, approved at a public hearing, is required for issuance of RZFR bonds. At the request of CSCDA, staff has scheduled this public hearing for approval of the subject resolution.

As part of the Joint Powers Agreement (Agreement) under which CSCDA operates, CSCDA is authorized to issue bonds, notes, other evidences of indebtedness or certificates of participation in leases or other agreements in order to promote economic development. However, under the terms

¹ Currently over 480 California cities, counties and special districts, including the City of Folsom, are Program Participants of CSCDA through a Joint Powers Agreement. In March, 2009, City Council approved City participation in CSCDA's Statewide Community Infrastructure Program (SCIP). City participation in SCIP enabled the recently completed and opened Hampton Inn and Suites Hotel in Folsom to secure SCIP financing. CSCDA also is commonly referred to as "California Communities".

of the Agreement, CSCDA may not approve a financing program unless the governing body of the Program Participant in whose jurisdiction the project is located (or to be located) approves the project and its financing. As a member of CSCDA, the City of Folsom is the Program Participant; and, therefore must approve the proposed financing.

Furthermore, Section 147(f) of the Internal Revenue Code of 1986 requires that the proposed financing be approved by a governmental unit having jurisdiction over the area in which the facility to be financed is located. A financing will be treated as having been approved by a governmental unit if "the applicable elected representative" of such governmental unit approves such issue after a public hearing following reasonable public notice of such hearing. Notice of this particular hearing here at the City of Folsom was duly published in the *Sacramento Bee* on August 10, 2010.

In accordance with Section 1400U-1 of the Internal Revenue Code, on December 8, 2009, the Sacramento County Board of Supervisors formally declared the county a recovery zone. Such a declaration is necessary before bond proceeds can be used. Designating an area, such as Sacramento County, as a recovery zone is intended to acknowledge the existence of economic distress including significant poverty, unemployment, rate of home foreclosures, or general distress. This declaration does not denote blight. As part of City Council's action approving the issuance of by CSCDA of RZFR bonds, the City must formally ratify the County's declaration of a county-wide recovery zone and acknowledge Folsom is located entirely within the boundaries of Sacramento County.

The City Attorney and the City's Finance Director/Chief Financial Officer have reviewed and approved the attached resolution. This financing is being structured so that neither CSCDA nor the City incurs any pecuniary liability.

POLICY/RULE

Per its Joint Powers Agreement with CSCDA and in accordance with Internal Revenue Service requirements, the City Council, as the elected representatives of the City of Folsom, must approve a resolution authorizing issuance of RZFR Bonds for SunEdison's California portfolio.

FISCAL IMPACT

With the exception of staff time involved in assisting CSCDA with approval of the subject resolution and related follow-up actions, the financial impact on the City should be minimal. The City has no financial obligation relative to bonds issued by CSCDA for ARRA purposes.

ENVIRONMENTAL REVIEW

Because the proposed resolution authorizes the sale of RZFR bonds with no physical change to the environment, it is categorically exempt under Section 15061 (b)(3) of the California Environmental Quality Act (CEQA).

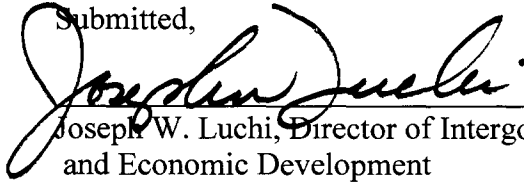
ATTACHMENT

Resolution No. 8715 - A Resolution of the City Council of the City of Folsom Approving the Issuance by the California Statewide Communities Development Authority of Recovery Zone Facility Revenue Bonds for the SunEdison California Portfolio

RECOMMENDATION/CITY COUNCIL ACTION

Staff recommends the City Council approve Resolution No. 8715 - A Resolution of the City Council of the City of Folsom Approving the Issuance by the California Statewide Communities Development Authority of Recovery Zone Facility Revenue Bonds for the SunEdison California Portfolio.

Submitted,



Joseph W. Luchi, Director of Intergovernmental Affairs
and Economic Development

RESOLUTION NO. 8715

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOLSOM APPROVING
THE ISSUANCE BY THE CALIFORNIA STATEWIDE COMMUNITIES
DEVELOPMENT AUTHORITY OF RECOVERY ZONE FACILITY REVENUE BONDS
FOR THE SUNEDISON CALIFORNIA PORTFOLIO**

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is authorized pursuant to the provisions of California Government Code Section 6500 et seq. and the terms of an Amended and Restated Joint Exercise of Powers Agreement, dated as of June 1, 1988 (the "Agreement"), among certain local agencies throughout the State of California, including the City of Folsom (the "City"), to issue revenue bonds for the purpose of promoting economic development in the State of California; and,

WHEREAS, SunEdison LLC or related entities, has requested that the Authority adopt a plan of financing providing for the issuance of recovery zone facility revenue bonds (the "Bonds") in one or more series issued from time to time, and at no time to exceed \$1,500,000 in outstanding aggregate principal amount, to finance the acquisition and installation of solar energy equipment located at 1030 Riley Street in the City and generally known as SunEdison California Portfolio (the "Project"); and,

WHEREAS, the Bonds or a portion thereof will be "private activity bonds" for purposes of the Internal Revenue Code of 1986 (the "Code"); and,

WHEREAS, pursuant to Section 147(f) of the Code, prior to their issuance, private activity bonds are required to be approved by the "applicable elected representative" of the governmental units on whose behalf such bonds are expected to be issued and by a governmental unit having jurisdiction over the entire area in which any facility financed by such bonds is to be located, after a public hearing held following reasonable public notice; and,

WHEREAS, the members of this City Council (this "City Council") are the applicable elected representatives of the City; and,

WHEREAS, there has been published, at least 14 days prior to the date hereof, in a newspaper of general circulation within the City, a notice that a public hearing regarding the Bonds would be held on a date specified in such notice; and,

WHEREAS, such public hearing was conducted on such date, at which time an opportunity was provided to interested parties to present arguments both for and against the issuance of the Bonds; and,

WHEREAS, by its Resolution No. 2009-0939 adopted on December 8, 2009, the Board of Supervisors of the County of Sacramento (the "County") has declared the County a "recovery zone" within the meaning of Section 1400U-1 of the Internal Revenue Code; and,

WHEREAS, the City is located entirely within the County;

WHEREAS, it is intended that this resolution shall constitute the approval of the issuance of the Bonds required by Section 147(f) of the Code and Section 9 of the Agreement, and ratification of the County's finding of a recovery zone that includes the City;

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

Section 1. The above recitals are true and correct.

Section 2. The City Council hereby approves the issuance of the Bonds by the Authority. It is the purpose and intent of the City Council that this resolution constitute approval of the Bonds for the purposes of (a) Section 147(f) of the Code and (b) Section 9 of the Agreement.

Section 3. 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 that they 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 approved hereby.

Section 4. The Clerk of the City Council shall forward a certified copy of this Resolution and a copy of the affidavit of publication of the hearing notice to:

Justin Cooper, Esq.
Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, California 94105

Section 5. This resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this 24th day of August, 2010 by the following roll-call vote:

AYES: Council Member(s):

NOES: Council Member(s):

ABSENT: Council Member(s):

ABSTAIN: Council Member(s):

Jeffrey M. Starsky, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK