



City Council Meeting

11-09-20

**Item**

**3.B.11.**

# Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Lisa Soghor, Assistant City Manager

Approved by: Reva Feldman, City Manager

Date prepared: October 28, 2020                      Meeting date: November 9, 2020

Subject: Interfund Loan Agreement for Civic Center Water Treatment Facility Operations and Maintenance Fund

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**RECOMMENDED ACTION:** Adopt Resolution No. 20-61 approving an interfund loan agreement for the Civic Center Water Treatment Facility Operations and Maintenance Fund.

**FISCAL IMPACT:** There is minimal fiscal impact associated with the recommended action. The loan from the General Fund to the Civic Center Water Treatment Facility Operations and Maintenance Fund (CCWTF O&M) will accrue interest at the published quarterly apportionment rate from the Local Agency Investment Fund (LAIF) established by the Treasurer of the State of California. The City's cash reserves are held primarily by LAIF and accrue this interest.

**WORK PLAN:** This item was included as item 8d in the Adopted Work Plan for Fiscal Year 2020-2021.

**DISCUSSION:** On May 11, 2020, the City Council discussed the wastewater and recycled water rates for the Civic Center Water Treatment Facility (CCWTF). The initial rates were based on estimates of the costs for operating the CCWTF that were below the actual costs. On May 11, 2020, due to the economic impacts of the COVID-19 pandemic, the City Council directed staff to postpone raising the wastewater and recycled water rates and to continue to use the current wastewater and recycled water rates for Fiscal Year 2020-2021. Additionally, the Council directed staff to treat the excess operating costs of the CCWTF as a loan from the General Fund to the CCWTF O&M Fund with a repayment term of three years commencing in Fiscal Year 2021-2022. Repayment will be built into the new wastewater and recycled water rates that will be presented to the Council in the spring of 2021.

On June 22, 2020, the City Council approved the collection of wastewater services charges for the CCWTF for Fiscal Year 2020-2021.

Staff is seeking confirmation on additional terms for the loan, which include establishing the interest rate for the loan based on the published quarterly apportionment rate from LAIF as established by the Treasurer of the State of California. This interest will be accrued to the loan on an annually and will compound over the life of the loan. The effective date of the loan will be July 1, 2019.

On October 28, 2020, the Administration and Finance Subcommittee recommended the City Council approve the interfund loan agreement with these terms.

**ATTACHMENTS:**

1. Interfund Loan Agreement for CCWTF O&M Fund
2. Resolution No. 20-61

## **INTERFUND LOAN AGREEMENT**

THIS INTERFUND LOAN AGREEMENT (“Agreement”) is dated as of \_\_\_\_\_, 2020, by and between the CITY OF MALIBU, ON BEHALF OF ITS GENERAL FUND (the “General Fund”), and the CITY OF MALIBU, ON BEHALF OF THE RATEPAYERS OF ASSESSMENT DISTRICT NO. 2015-1 (CIVIC CENTER WATER TREATMENT FACILITY – PHASE I). This Agreement is entered into with reference to the following recitals of fact (“Recitals”) that the City of Malibu (“City”) believes to be true, as of the date this Agreement is executed:

### **RECITALS**

A. The City Council has determined that it is in the City’s best interest to temporarily supplement operation and maintenance costs associated with the Civic Center Water Treatment Facility-Phase One (“CCWTF”) compared to raising existing wastewater and recycled water rates.

B. The initial rates for wastewater and recycled water were set based on estimates prepared by a consultant considering comparable facilities in other cities. The actual costs for operating the CCWTF have been higher than those initial estimates.

C. In Fiscal Year 2018-2019, the City Council authorized General Funds in the amount of \$105,181.96 to cover the additional operation and maintenance costs of the CCWTF that exceeded the amounts recovered from the ratepayers. In Fiscal Year 2019-2020, the City Council authorized General Funds in the amount of \$219,986.31 to cover the additional operation and maintenance costs of the CCWTF that exceeded the amounts recovered from the ratepayers.

D. For Fiscal Year 2020-2021, the City will similarly authorize funds from the General Fund to cover the operation and maintenance costs of the CCWTF that exceed the amounts received from the ratepayers. While a final audited number will be the amount authorized from the General Fund, the City estimates this amount for be \$306,242.00.

E. A total of \$325,168.27 has already been authorized from the General Fund to cover the operation and maintenance costs for the CCWTF and an estimated \$306,242.00 will be authorized for Fiscal year 2020-2021.

F. Future wastewater and recycled water rates for the CCWTF will be used to repay this loan amount per this Agreement.

G. The City Council now desires to enter into this Agreement for the purpose of memorializing the terms of repayment to the City’s General Fund from the City’s CCWTF wastewater and recycled water rates (“CCWTF Fund”).

H. Repayment to the General Fund from the CCWTF Fund is an appropriate expense, payable from wastewater and recycled water rates deposited therein, because the costs

are accrued as a result of the provision of the service provided by the CCWTF to the ratepayers.

I. The City Council finds that there is a public purpose in providing efficient wastewater and recycled water services.

J. The City Council now desires to enter into this Agreement to memorialize the terms and conditions of the loan.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the City, the Parties agree as follows:

## **I. TERM.**

**A. Effective Date of Agreement.** This Agreement shall be effective as of the date first set forth above.

**B. Term.** The term of this Agreement commences on the effective date, July 1, 2019, and shall continue until the loan amount is repaid in accordance with the repayment schedule set forth below.

**C. Prepayment; Extensions.** The Loan Amount provided in Section II may be prepaid by the CCWTF Fund at any time. In addition, the repayment schedule set forth below may be extended by the City at any time and for any reason. If the repayment schedule is extended, the repayment schedule set forth below shall be amended accordingly.

## **II. LOAN.**

**A. Loan Amount.** The General Fund shall loan \$325,168.27 plus the final audited amount for Fiscal Year 2020-2021 (estimated to be \$306,242.00) (“Loan Amount”) to the CCWTF Fund to pay for a portion of the operation and maintenance costs of the CCWTF.

**B. Repayment of Loan Amount.** The CCWTF Fund shall repay the Loan Amount to the General Fund within three (3) years beginning July 1, 2021. The Loan Amount shall accrue interest, and compound, on an annual basis from the effective date of this Agreement at an interest rate equal to the published quarterly apportionment rate set by the Local Agency Investment Fund established by the Treasurer of the State of California for the four quarters prior to the interest accrual date.

**C. Forgiveness of Loan Amount.** The General Fund may forgive the Loan Amount, in whole or in part, at any time. If the General Fund forgives the Loan Amount, the City shall make findings on behalf of the General Fund demonstrating that a public purpose is served by forgiving the Loan Amount.

## **III. GENERAL TERMS.**

**A. Time Is Of The Essence.** Time of the essence in the performance of the Parties' obligations under this Agreement.

**B. Exhibits and Recitals.** All Exhibits and Recitals contained herein are hereby incorporated into this Agreement by this reference.

**C. No Third Party Beneficiaries.** This Agreement is expressly declared to be for the sole benefit of the Parties hereto. No other person or entity not a signatory to this Agreement shall have any rights or causes of actions against any Party to this Agreement because of that Party's entry into this Agreement.

**D. Assignment.** City may not assign any of its rights or obligations hereunder.

**E. Failure to Strictly Enforce Not a Waiver.** Failure by any Party to this Agreement to insist upon the strict performance of any provision of the Agreement or at any one or more times shall not be deemed to constitute a waiver of that Party's right to insist upon strict performance of that or any other provision of this Agreement on future occasions. No alleged waiver of any right under this Agreement shall be effective unless in writing.

**F. Amendments and Modifications.** This Agreement may be amended only by written agreement of the Parties.

**G. Severability.** If any provision of this Agreement or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

**[Signatures on Following Page]**

**SIGNATURE PAGE  
TO  
INTERFUND LOAN AGREEMENT**

**GENERAL FUND:**

CITY OF MALIBU,  
on behalf of its General Fund

By: \_\_\_\_\_

Mikke Pierson  
Mayor

**ATTEST:**

By: \_\_\_\_\_

Heather Glaser  
City Clerk

**APPROVED AS TO LEGAL FORM:**

THIS DOCUMENT HAS BEEN REVIEWED  
By: \_\_\_\_\_  
BY THE CITY ATTORNEY'S OFFICE

Christi Hogin  
City Attorney

**WATER CAPITAL FUND:**

CITY OF MALIBU,  
on behalf of Assessment District No. 2015-1 (Civic  
Water Treatment Facility – Phase I

By: \_\_\_\_\_

Mikke Pierson  
Mayor

**ATTEST:**

By: \_\_\_\_\_

Heather Glaser  
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RESOLUTION NO. 20-61

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU  
AUTHORIZING A FUND-TO-FUND LOAN FROM THE GENERAL FUND TO  
THE CIVIC CENTER WATER TREATMENT FACILITY OPERATIONS AND  
MAINTENANCE AND AUTHORIZING A REPAYMENT PLAN.

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. The City Council has determined that it is in the City's best interest to temporarily supplement operation and maintenance costs associated with the Civic Center Water Treatment Facility-Phase One ("CCWTF") compared to raising existing wastewater and recycled water rates.

B. The initial rates for wastewater and recycled water were set based on estimates prepared by a consultant considering comparable facilities in other cities. The actual costs for operating the CCWTF have been higher than those initial estimates.

C. In Fiscal Year 2018-2019, the City Council authorized General Funds in the amount of \$105,181.96 to cover the additional operation and maintenance costs of the CCWTF that exceeded the amounts recovered from the ratepayers. In Fiscal Year 2019-2020, the City Council authorized General Funds in the amount of \$219,986.31 to cover the additional operation and maintenance costs of the CCWTF that exceeded the amounts recovered from the ratepayers.

D. For Fiscal Year 2020-2021, the City will similarly authorize funds from the General Fund to cover the operation and maintenance costs of the CCWTF that exceed the amounts received from the ratepayers. While a final audited number will be the amount authorized from the General Fund, the City estimates this amount to be \$306,242.00.

E. Future wastewater and recycled water rates for the CCWTF will be used to repay this loan amount per this Agreement.

SECTION 2. A total of \$325,168.27 has already been authorized from the General Fund to cover the operation and maintenance costs for the CCWTF and an estimated \$306,242.00 will be authorized for Fiscal year 2020-2021. These amounts shall be allocated as a fund-to-fund loan from the City's Undesignated General Fund Reserve to the CCWTF Operations and Maintenance Fund in accordance with Exhibit A, attached hereto and incorporated herein.

SECTION 3. The repayment schedule in the Loan Agreement, attached hereto as Exhibit A is approved.

SECTION 4. The effective date of the loan shall be July 1, 2019.

SECTION 5. The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 9<sup>th</sup> day of November 2020.

ATTACHMENT 2

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MIKKE PIERSON, Mayor

ATTEST:

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HEATHER GLASER, City Clerk  
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE  
CHRISTI HOGIN, City Attorney

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Mikke Pierson  
Mayor

By: \_\_\_\_\_  
Mikke Pierson  
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Christi Hogin  
City Attorney

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