

**RESOLUTION NO. 82-09**

**A RESOLUTION OF THE CITY COUNCIL AMENDING AND RESTATING RESOLUTION NO 37-09 AUTHORIZING THE EXECUTION AND DELIVERY OF A SWAP AGREEMENT RELATING TO THE CITY'S WASTEWATER REVENUE BONDS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH**

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WHEREAS, pursuant to the Charter of the City of Richmond (the "City") and Chapter 13.56 of Article 13 of the Richmond Municipal Code (together, the "Bond Law"), the City is authorized to issue revenue bonds to finance the acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation of the wastewater treatment and collection facilities of the City (the "Enterprise") or for the purpose of refunding bonds issued for such purposes; and

WHEREAS, in accordance with the Bond Law and an Indenture of Trust, dated as of October 1, 2006 (the "Master Indenture"), by and between the City and the Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as supplemented by a First Supplemental Indenture, dated as of October 1, 2006 (the "First Supplemental Indenture"), by and between the City and the Trustee, and as supplemented by a Second Supplemental Indenture, dated as of October 1, 2006 (the "Second Supplemental Indenture"), by and between the City and the Trustee, the City has previously issued its Wastewater Revenue Refunding Bonds, Series 2006A (the "Series 2006A Bonds") in an aggregate principal amount of \$16,570,000 and its Wastewater Revenue Bonds, Series 2006B (the "Prior Bonds") in an aggregate principal amount of \$32,260,000 to provide funds to fund improvements to the Enterprise, defease a portion of the City's Wastewater Revenue Bonds, Series 1999, to fund a debt service reserve surety and to pay costs of issuance; and

WHEREAS, in accordance with the Bond Law and the Master Indenture, as supplemented by a Third Supplemental Indenture, dated as of October 1, 2008 (the "Third Supplemental Indenture" and together with the Master Indenture, as previously supplemented, the "Indenture") between the City and the Trustee, the City has previously issued its Variable Rate Wastewater Revenue Refunding Bonds, Series 2008A (the "Series 2008A Bonds", and together with the Series 2006A Bonds, the "Bonds") for the purpose of refunding the Prior Bonds and to pay costs of issuance; and

WHEREAS, the City has previously adopted a set of standard policies governing certain financial transactions designed to reduce interest rate risk or lower overall borrowing costs set forth in the City of Richmond Swap Policy (the "Swap Policy"); and

WHEREAS, in order to reduce the amount of interest rate risk or lower the cost of borrowing in combination with the issuance of the Prior Bonds and in compliance with the Swap Policy, the City entered into an interest rate swap agreement pursuant to an ISDA Master Agreement, together with the schedule and confirmation thereto (the "2006 Swap Agreement"), originally between the City and Bear Stearns Capital Markets Inc., which remains in effect with respect to the Series 2008A Bonds; and

WHEREAS, in order to reduce the exposure of the City to an early termination event with respect to the 2006 Swap Agreement and to manage the cost of borrowing in connection with the Bonds, and in compliance with the Swap Policy, the City deems it necessary and desirable to enter into a replacement interest rate swap agreement pursuant to an ISDA Master Agreement (the "Master Agreement"), together with the credit support annex, schedule and confirmation thereto (the "Replacement Swap Documents", and together with the Master Agreement, the "2009 Swap Agreement"), between the City and Royal Bank of Canada (the "Counterparty"); and

WHEREAS, the City has engaged Orrick, Herrington & Sutcliffe LLP as bond counsel in connection with the proceedings contemplated hereby; and

WHEREAS, it will be necessary for the City to employ a swap advisor in connection with the proceedings contemplated hereby; and

WHEREAS, in furtherance of implementing the execution and delivery of the 2009 Swap Agreement, the following documents have been prepared, reviewed and approved as to form by City staff, and presented at this meeting:

1. Master Agreement; and
2. Replacement Swap Documents;

WHEREAS, the City has full legal right, power and authority under the Constitution and the laws of the State of California to enter into the transactions hereinafter authorized; and

WHEREAS, the City Council adopted its Resolution No. 37-09 on May 5, 2009 authorizing certain actions in connection with the Bonds and the 2006 Swap Agreement and desires to amend and restate said resolution as provided herein;

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Richmond, that Resolution No. 37-09 of the City Council is hereby amended and restated, as follows:

Section 1. The foregoing recitals are true and correct and this Council hereby so finds and determines.

Section 2. The City hereby determines that the entering into of the 2009 Swap Agreement with the Counterparty pursuant to Section 5922 of the California Government Code in a notional amount not exceeding the aggregate outstanding principal amount of the Bonds would be designed to reduce the City's cost of borrowing for the Bonds, and the Director of Finance or the City Manager (the "Authorized Representatives") are each hereby authorized and directed, severally, or any such officer's designee, for and on behalf of the City, to negotiate the 2009 Swap Agreement with the Counterparty in a notional amount not exceeding the aggregate outstanding principal amount of the Bonds, with a view to reducing the City's cost of borrowing evidenced and represented by the Bonds, and such Authorized Officer is hereby authorized to execute and deliver the Master Swap Agreement in substantially the form presented to this meeting with such changes therein, deletions therefrom and additions thereto, including the Replacement Swap Documents, as may be approved by such Authorized Representative in consultation with the City's swap advisor and bond counsel, with such execution to be conclusive evidence of such approval; provided, however, that such Authorized Officer shall not execute and deliver the 2009 Swap Agreement unless: (a) such agreement is designed (i) to reduce or hedge the amount or duration of any payment, interest rate, spread or similar risk, or (ii) to result in a lower cost of borrowing when used in combination with the Bonds; (b) the term of such 2009 Swap Agreement does not exceed the final maturity of the Bonds; (c) the initial aggregate notional amount of the 2009 Swap Agreement does not exceed the outstanding aggregate principal amount of the Bonds; (d) the amounts payable by the City with respect to the 2009 Swap Agreement shall be payable solely and exclusively from Net Revenues (as defined in the Indenture); (e) the 2009 Swap Agreement conforms with the Swap Policy; and (f) the interest rate paid by the City under the 2009 Swap Agreement shall be a fixed rate not to exceed 3.90% and the interest rate paid by the Counterparty under the 2009 Swap Agreement shall be calculated based upon the London Interbank Overnight Rate (LIBOR).

Section 3. The firm of Swap Financial Group LLC shall be, and such firm is, hereby appointed swap advisor to the City in connection with the execution and delivery of the 2009 Swap Agreement. The City Manager is hereby authorized to enter into an agreement with Swap Financial Group LLC for their services in this connection.

Section 4. The officers and agents of the City are, and each of them hereby is, authorized and directed to do any and all things and to execute and deliver any and all documents which they or any of them deem necessary or advisable in order to consummate the execution and delivery of the 2009 Swap Agreement, including, but not limited to, the execution and delivery of an agreement supplementing or amending the Indenture, if necessary, a tax certificate, any documents, document amendments or certificates necessary to terminate the 2006

Swap Agreement, and to do any and all things and take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which the City has approved in this Resolution. All actions heretofore taken by the officers and agents of the City with respect to the execution and delivery of the 2009 Swap Agreement, and the other transactions authorized and contemplated herein are hereby approved, confirmed and ratified. Notwithstanding any provision of this resolution authorizing an Authorized Representative to take any action or execute any document to the contrary, in the absence of such Authorized Representative or in lieu of such Authorized Representative, the person designated in writing by such Authorized Representative, may take such action or execute such document with like effect as fully as though named in this resolution instead of such Authorized Representative.

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

I hereby certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held July 28, 2009, by the following vote:

AYES: Councilmembers Bates, Butt, Rogers, Ritterman, Viramontes, Vice Mayor Lopez, and Mayor McLaughlin.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES  
Clerk of the City of Richmond

(SEAL)

Approved:

GAYLE McLAUGHLIN  
Mayor

Approved as to form:

RANDY RIDDLE  
City Attorney

State of California        }  
County of Contra Costa        :ss  
City of Richmond        }

I certify that the foregoing is a true copy of Resolution No. 82-09, finally passed and adopted by the City of Richmond at a regular meeting held on July 28, 2009.