

RESOLUTION NO. 115-09

A RESOLUTION OF THE CITY COUNCIL APPROVING THE ISSUANCE BY THE RICHMOND JOINT POWERS FINANCING AUTHORITY OF NOT TO EXCEED \$105,000,000 AGGREGATE PRINCIPAL AMOUNT OF LEASE REVENUE REFUNDING BONDS (CIVIC CENTER PROJECT), SERIES 2009; AUTHORIZING THE FORMS OF AND DIRECTING THE EXECUTION AND DELIVERY OF A SITE LEASE AMENDMENT, A FACILITY LEASE AMENDMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND AN OFFICIAL STATEMENT; AUTHORIZING A LEASE FINANCING WITH THE RICHMOND JOINT POWERS FINANCING AUTHORITY; SUPPLEMENTING RESOLUTION NO. 99-09 IN CONNECTION WITH A FIXED-RECEIVER SWAP AGREEMENT; AND APPROVING THE TAKING OF ALL NECESSARY ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Richmond Joint Powers Financing Authority (the "Authority") is empowered to assist the City of Richmond (the "City") in financing and refinancing certain public capital improvements pursuant to Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and pursuant to that certain Joint Exercise of Powers Agreement, dated as of December 1, 1989 (the "Joint Powers Agreement"), by and between the City and the Richmond Redevelopment Agency; and

WHEREAS, pursuant to Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "JPA Law") and the Joint Powers Agreement, the Authority is authorized to issue bonds for financing and refinancing public capital improvements whenever there are significant public benefits;

WHEREAS, the City has requested, and it furthers the public purpose for, the Authority to assist the City in the refinancing of public capital improvements within the City, including the demolition, site preparation, construction, furnishing, and equipping of a city hall building, hall of justice building, arts center, auditorium building, conference space and civic center plaza (the "Civic Center Project");

WHEREAS, the Authority has heretofore authorized and issued its \$101,420,000 Lease Revenue Bonds (Refunding and Civic Center Project), Series 2007 (the "Series 2007 Bonds"), pursuant to an Indenture, dated as of September 1, 2007, as amended by a First Amendment to Indenture, dated as of May 1, 2008 (as amended, the "Indenture"), by and between the Authority and Zions First National Bank, as trustee (the "Trustee") for the purpose of financing the Civic Center Project and refinancing certain public capital improvements within the City; and

WHEREAS, the Series 2007 Bonds were originally issued as variable rate bonds in a Weekly Interest Rate Period pursuant to the Indenture; 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 minimize debt service and maximize benefits to the City, the City requested that the Authority execute a swap agreement in compliance with the Swap Policy providing for fixed swap rates on the Series 2007 Bonds; and

WHEREAS, the Authority has heretofore executed the ISDA Master Agreement and related Schedule, Credit Support Annex and Confirmation (hereinafter referred to as the "2007 Swap Agreement"), each between the Authority and the Royal Bank of Canada (the "Counterparty"); and

WHEREAS, the City has determined that it is necessary and desirable to refinance the Civic Center Project through the issuance by the Authority of its Lease Revenue Refunding Bonds (Civic Center Project), Series 2009 (the "Series 2009 Bonds") as fixed rate bonds in a Long Term Interest Period pursuant to a First Supplemental Indenture, dated as of November 1, 2009 (the "First Supplemental Indenture"), by and between the Authority and the Trustee, supplementing and amending the Indenture; and

WHEREAS, in connection with the issuance of the Series 2009 Bonds, the City deems it necessary and desirable to request the Authority to maintain the 2007 Swap Agreement in full force and effect by entering into an offsetting interest rate swap agreement (or an option to do so) with the Counterparty (the “2009 Swap Agreement”) on or before the date of issuance of the Series 2009 Bonds, and in compliance with the Swap Policy; and

WHEREAS, on September 15, 2009, the City requested and the Authority authorized the execution and delivery of the 2009 Swap Agreement, and such approval is to be supplemented hereby to allow for entering into an option to deliver the Series 2009 Swap Agreement; and

WHEREAS, in connection with the issuance and carrying of bonds pursuant to the Indenture, the City and the Authority have entered into a Site Lease (the “Site Lease”) and a Facility Lease (the “Facility Lease”), each dated as of September 1, 2007, and the City and the Authority have determined that it is necessary and desirable to amend the Site Lease and the Facility Lease in connection with the issuance of the Series 2009 Bonds; and

WHEREAS, there have been presented to this meeting the proposed forms of :

1. a First Supplemental Indenture, dated as of November 1, 2009 (the “First Supplemental Indenture”), by and between the Authority and Zions First National Bank as trustee (the “Trustee”),
2. a First Amendment to Site Lease, dated as of November 1, 2009 (the “Site Lease”), by and between the City and the Authority,
3. a First Amendment to Facility Lease, dated as of November 1, 2009 (the “Facility Lease”), by and between the City and the Authority,
4. a Bond Purchase Agreement, to be dated the date of sale of the Series 2009 Bonds (the “Bond Purchase Agreement”), by and between the Authority, the City and RBC Capital Markets (the “Underwriter”),
5. a Continuing Disclosure Agreement (the “Continuing Disclosure Agreement”), to be dated the date of closing of the Series 2009 Bonds, executed and delivered by the City and the Trustee; and
6. an official statement relating to the Series 2009 Bonds (the “Official Statement”).

WHEREAS, Tamalpais Advisors, Inc. is serving as financial advisor (the “Financial Advisor”) to the City and the Authority, Lofton & Jennings is serving as disclosure counsel (the “Disclosure Counsel”) to the City and the Authority and Orrick, Herrington & Sutcliffe LLP is serving as bond counsel (“Bond Counsel”) to the City and the Authority in connection with the financing;

WHEREAS, this Council has been presented with the form of each document referred to herein relating to the Series 2009 Bonds, and the Council has examined and approved each document and desires to authorize and direct the execution of such documents and the consummation of such financing;

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

WHEREAS, the Authority expects to finance the Civic Center Project on a tax-exempt basis;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RICHMOND, AS FOLLOWS:

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

Section 2. The Council hereby approves the issuance of the Series 2009 Bonds by the Authority, in an aggregate principal amount not to exceed \$105,000,000, for the refinancing of

the Civic Center Project. The form of First Supplemental Indenture presented to this meeting is hereby approved.

Section 3. The proposed form of First Amendment to Site Lease on file with the City Clerk, is hereby approved. The City Manager and Director of Finance are each hereby authorized and directed, severally, or any such officer's designee, for and on behalf of the City, to execute and deliver the First Amendment to Site Lease in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, that the term thereof shall not exceed forty-five years.

Section 4. The proposed form of First Amendment to Facility Lease on file with the City Clerk, is hereby approved. The City Manager and Director of Finance are each hereby authorized and directed, severally, or any such officer's designee, for and on behalf of the City, to execute and deliver the First Amendment to Facility Lease in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, that the annual amount of base rental payable thereunder by the City in each fiscal year shall be at least equal to projected debt service on the Series 2009 Bonds; and provided further, that such base rental shall not exceed \$13,000,000.

Section 5. The proposed form of Bond Purchase Agreement on file with the City Clerk is hereby approved. The City Manager and Director of Finance are each hereby authorized and directed, severally, or any such officer's designee, for and on behalf of the City, to accept the offer of the Underwriter to purchase the Series 2009 Bonds as reflected in the Bond Purchase Agreement; and to execute and deliver the Bond Purchase Agreement in substantially the form on file with the City Clerk, with such additions, deletions or changes therein as such officer determines are necessary or appropriate and are approved by such officer, such approval to be conclusively evidenced by the execution and delivery of the Bond Purchase Agreements; provided, that (i) the interest rate on the Series 2009 Bonds shall not exceed twelve percent (12%) per annum, (ii) the underwriting discount (excluding any original issue discount) shall not exceed one percent (1%) of the principal amount of Series 2009 Bonds sold, and (iii) the true interest cost for the Series 2009 Bonds shall not exceed seven percent (7%).

Section 6. The proposed form of Continuing Disclosure Agreement on file with the City Clerk is hereby approved. The City Manager and Director of Finance are each hereby authorized and directed, severally, or any such officer's designee, for and on behalf of the City, to execute and deliver said Continuing Disclosure Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. The proposed form of Official Statement on file with the City Clerk is hereby approved. The City Manager and Director of Finance are each hereby authorized and directed, severally, or any such officer's designee, for and on behalf of the City, to execute and deliver the Official Statement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof. The Underwriter is hereby directed to distribute copies of the Official Statement to all actual purchasers of the Series 2009 Bonds. Distribution by the Underwriter of a Preliminary Official Statement relating to the Series 2009 Bonds (either in printed form or by posting electronically) is hereby approved and the City Manager and Director of Finance are each hereby authorized and directed, acting singly, to execute a certificate confirming that the Preliminary Official Statement has been "deemed final" by the City for purposes of Securities and Exchange Commission Rule 15c2-12.

Section 8. 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 sale of the Series 2009 Bonds, including, but not limited to, the execution and delivery of a continuing disclosure certificate or agreement and a tax certificate, and the execution of any documents necessary in connection with bond insurance or other credit enhancement for the bonds or the investment of proceeds of the bonds, and the approval of any amendments to the 2007 Swap Agreement or the 2009 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 sale, execution and delivery of the Series 2009 Bonds, and the other transactions authorized and contemplated herein are hereby approved, confirmed and ratified. Notwithstanding any provision of this resolution authorizing an officer to take any action or execute any document to the contrary, in the absence of such officer or in lieu of such officer, the person designated in writing by such officer, may take such action or execute such document with like effect as fully as though named in this resolution instead of such officer.

Section 9. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Resolution, whether before or after the sale or issuance of the Series 2009 Bonds, including without limitation any of the foregoing that may be necessary or desirable in connection with any default under or amendment of such documents or additional confirmations, settlements or revisions, may be given or taken, without further authorization by this Board, by the City Manager or Director of Finance and each such officer is hereby authorized and directed to give any such consent, approval, notice, order or request and to take any such action which such officers may deem necessary or desirable to further the purposes of this Resolution.

Section 10. Resolution No. 99-09, adopted by this Council on September 15, 2009, is hereby supplemented to authorize entering into an option to deliver the Series 2009 Swap Agreement in the future at a specific fixed rate for a specific option payment if doing so is in the best interests of the city as determined by the Director of Financing in consultation with the Swap Advisor and the Financial Advisor.

Section 11. This Resolution shall take effect from and after its adoption.

I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond at a regular meeting thereof, held on October 20, 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. 115-09**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on October 20, 2009.