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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL MEMBER _____


CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. 82097 C. M. S.

RESOLUTION AUTHORIZING AND DIRECTING THE SALE OF NOT TO EXCEED \$70,000,000 AGGREGATE PRINCIPAL AMOUNT OF CITY OF OAKLAND GENERAL OBLIGATION BONDS (SERIES 2009B, MEASURE DD) AND LEVYING AN *AD VALOREM* TAX WITH RESPECT THERETO; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FISCAL AGENT AGREEMENT; APPROVING THE SELECTION OF ONE OR MORE UNDERWRITERS AND THE EXECUTION OF BOND PURCHASE CONTRACT(S) OR A COMPETITIVE SALE; APPROVING THE FORM OF AND AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND AUTHORIZING EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT; APPROVING THE RETENTION OF BOND COUNSEL AND OTHER AGENTS; AUTHORIZING PAYMENT OF COSTS OF ISSUANCE; AND AUTHORIZING NECESSARY ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Oakland (the "City") is a municipal corporation and charter city duly organized and existing under the Constitution and laws of the State of California and its charter (the "Charter"); and

WHEREAS, pursuant to Ordinance No. 12931 (the "Bond Ordinance"), the City may issue general obligation bonds by competitive or negotiated sale and with such terms as are provided in a fiscal agent agreement; and

WHEREAS, the provisions of the Constitution of the State of California, Article 1 of Chapter 4 of Division 4 of Title 4 (commencing with Section 43600) of the Government Code of the State of California and other applicable laws of the State of California (the "Bond Act") authorize local governments to issue bonds secured by a levy of *ad valorem* taxes; and

WHEREAS, on November 5, 2002 more than two-thirds of the qualified voters of the City approved a proposition ("Measure DD") authorizing the issuance by the City of its general obligation bonds in an amount not to exceed \$198,250,000 to preserve and acquire open space, renovate parks, provide educational and recreation facilities for children, clean up Lake Merritt, restore Oakland's creeks, waterfront and estuary, and provide matching funds to qualify for state and federal funding, as further described in Measure DD (the "Project"); and

WHEREAS, the City intends to issue general obligation bonds in one or more series under and pursuant to the Bond Ordinance, the Charter and the Bond Act to pay costs of the Project; and

WHEREAS, the City may also determine to issue taxable Build America Bonds (“BABs”) authorized under the American Recovery and Reinvestment Act of 2009; and

WHEREAS, on August 6, 2003, the City issued \$71,450,000 City of Oakland General Obligation Bonds (Series 2003A, Measure DD); and

WHEREAS, the City Council has determined it necessary and desirable to issue an additional series of bonds pursuant to Measure DD in order to finance additional portions of the cost of the Project, in an amount not to exceed \$70,000,000; now, therefore be it

RESOLVED, as follows:

Section 1. Conditions Precedent. All conditions, things and acts required by law to exist, to happen and to be performed precedent to and in connection with the issuance of the City of Oakland, California General Obligation Bonds (Series 2009B, Measure DD) exist, have happened and have been performed in due time, form and manner, in accordance with applicable law, and the City is now authorized pursuant to the Charter and applicable law to incur indebtedness in the manner and form provided in this Resolution, as may be supplemented from time to time.

Section 2. Issuance of Bonds. The City Council hereby authorizes the issuance of general obligation bonds of the City which shall be designated the “City of Oakland General Obligation Bonds (Series 2009B, Measure DD)” (the “Bonds”) in an aggregate principal amount of not to exceed \$70,000,000, subject to the following:

(a) The Bonds shall have an interest rate not to exceed twelve percent (12%) (the maximum rate permitted by law) and a term not to exceed thirty-five (35) years; and

(b) Costs incurred in connection with the issuance of the Bonds (excluding any cost of credit enhancement) shall not exceed two percent (2%) of the principal amount of the Bonds.

Section 3. Form of Bonds. The form of the Bonds, in substantially the form attached as Exhibit A to the Fiscal Agent Agreement described below, is hereby approved and adopted. The City Administrator (the “City Administrator”) is hereby authorized and directed to approve and to execute the Bonds by manual or facsimile signature; and the Clerk of the City (the “City Clerk”) is hereby authorized and directed to attest, by manual or facsimile signature and to cause the seal of the City to be reproduced or impressed on the Bonds, with such changes, additions, amendments or modifications made in accordance with Section 13 hereof.

Section 4. Fiscal Agent Agreement. The form of Fiscal Agent Agreement (the "Fiscal Agent Agreement") between the City and the fiscal agent named therein (the "Fiscal Agent"), in substantially the form on file with the City Clerk, is hereby approved and adopted. The Finance Director/Treasurer (the "Finance Director") is hereby authorized and directed to execute, the City Administrator is hereby authorized and directed to approve and the City Clerk is hereby authorized to attest to, the Fiscal Agent Agreement in substantially such form, with such changes, additions, amendments or modifications (including but not limited to changes, additions, amendments or modifications necessary to obtain ratings on the Bonds), as are approved by the Finance Director in consultation with the City Attorney (the "City Attorney"), in the interest of the City, such approval to be conclusively evidenced by said execution. The City hereby agrees to comply with, or cause to be complied with, all covenants of the City set forth in the Fiscal Agent Agreement.

Section 5. Tax Levy. For the purpose of paying the principal of and interest on the Bonds as it becomes due, the City Council at the time of fixing the general tax levy shall levy and collect annually each year an *ad valorem* tax in an amount sufficient to pay the principal of and interest on the Bonds when due until all outstanding Bonds have been paid, or provision for their payment has been made in accordance with the Fiscal Agent Agreement. Said tax shall be in addition to all other taxes levied for City purposes and shall be collected at the same time and in the same manner as other taxes of the City are collected. Finance officers of the City are hereby authorized and directed to cause such levy and collection of *ad valorem* taxes to occur and take such actions as may be required to cause the County of Alameda to levy and collect such *ad valorem* taxes on behalf of the City.

Pursuant to this Resolution, the City hereby pledges as security for the Bonds and the interest thereon, the proceeds of said *ad valorem* tax. The Finance Director is hereby directed to transfer the proceeds of the aforementioned tax to the Fiscal Agent for deposit into the Debt Service Account established under the Fiscal Agent Agreement. Such fund or funds shall be kept separate and apart from all other funds. So long as any of the Bonds are outstanding, moneys in said funds shall be used solely for the purpose of paying the principal of and interest on the Bonds as such principal and interest shall become due and payable; provided, however, that when all of the principal and interest on all of the Bonds has been paid, any balance of money then remaining in said funds shall be transferred by the Fiscal Agent to the City for deposit into the General Fund of the City.

Section 6. Appointment of Depositories and Other Agents. The Finance Director is hereby authorized and directed to appoint from time to time one or more depositories for the Bonds, as s/he may deem desirable.

The Finance Director is hereby also authorized and directed to appoint from time to time one or more agents, as s/he may deem necessary or desirable. To the extent permitted by applicable law, and under the supervision of the Finance Director, such agents may serve as paying agent, fiscal agent or registrar for the Bonds, or financial printer or may assist the Finance Director in performing any or all of such

functions and other duties as the Finance Director shall determine. Such agents shall serve under such terms and conditions as the Finance Director shall determine. The Finance Director may remove or replace agents appointed pursuant to this section at any time.

Section 7. Authorization of Method of Sale. The Finance Director is hereby authorized and directed to determine the method of sale of the Bonds. In the event the Finance Director determines to sell the Bonds by negotiated sale, the Finance Director is hereby authorized to select one or more underwriters and to arrange for the sale of the Bonds by negotiated sale pursuant to one or more bond purchase contracts, which contract(s) shall be in such form as the Finance Director shall determine upon consultation with the City Attorney. The Finance Director has conducted a selection process for underwriters based on a request for proposals and has preliminarily selected J.P. Morgan Securities Inc. and E.J. De La Rosa & Co., Inc. as underwriters of the Bonds (together the "Underwriters"). The Finance Director's selection of the Underwriters is hereby ratified and approved.

In the event the Finance Director determines to issue the Bonds by competitive sale, the Finance Director is authorized to establish a date, time and place to receive bids for the purchase of the Bonds as described in and subject to the terms and conditions of the Official Notice of Sale (described below). The Finance Director is authorized to receive bids for the purchase of the Bonds and to award such Bonds to the bidder whose bid for the Bonds results in the lowest true interest cost to the City, all in accordance with and determined by the procedures described in the Official Notice of Sale, as approved by the Finance Director, whose approval shall be evidenced by executing a counterpart of the final Official Notice of Sale.

Section 8. Notice of Sale. In the event the Finance Director determines to issue the Bonds by competitive sale, the Finance Director is hereby authorized to approve, upon consultation with the City Attorney, an Official Notice of Sale and Bid Form (the "Official Notice of Sale") inviting bids for the Bonds, adopted with such changes, additions, amendments or modifications as may be made in accordance with Section 14 hereof.

Section 9. Notice of Intention to Sell. In the event the Finance Director determines to issue the Bonds by competitive sale, the City Clerk is hereby authorized to cause to be published a Notice of Intention describing the Bonds, no later than five days prior to the sale date, in a form as approved by the Finance Director.

Section 10. Official Statement. The Finance Director is hereby authorized and directed, in consultation with the City Attorney, to prepare a preliminary official statement for the Bonds authorized by this Resolution. The form of proposed preliminary official statement (the "Preliminary Official Statement"), in substantially the form presented to this City Council and on file with the City Clerk, is hereby approved and adopted with such changes, additions, amendments or modifications as may be made in accordance with Section 14 hereof. The Finance Director is hereby authorized to cause the distribution of a Preliminary Official Statement for the Bonds deemed final

by this City Council for purposes of Rule 15c2-12 of the Securities and Exchange Act of 1934, as amended, and the City Administrator and the Finance Director are each separately authorized to execute a certificate to that effect. The City Administrator and the Finance Director are each separately authorized and directed to sign a final Official Statement for the Bonds. The Finance Director is hereby authorized and directed to cause to be printed and mailed to prospective bidders of the Bonds copies of the Preliminary Official Statement and the final Official Statement.

Section 11. Build America Bonds. The Bonds are authorized to be issued as bonds the interest on which is excluded from gross income for Federal income tax purposes ("Tax-Exempt Bonds"), or as bonds the interest on which is included in gross income for Federal income tax purposes ("Taxable Bonds"), including, without limitation, bonds as described in the American Recovery and Reinvestment Act of 2009, or in part as Tax-Exempt Bonds and in part as Taxable Bonds. The Finance Director shall determine whether to issue the Bonds, or portions thereof, as Tax-Exempt Bonds or Taxable Bonds based upon consultation with the City Attorney, Co-Bond Counsel (hereinafter defined) and the Financial Advisor (hereinafter defined).

Section 12. Appointment of Co-Bond Counsel, Disclosure Counsel and Financial Advisor. The retention of the law firms of Hawkins Delafield & Wood LLP and Curis Bartling P.C. as co-bond counsel to the City ("Co-Bond Counsel") and Law Offices of Alexis S. M. Chiu as disclosure counsel to the City ("Disclosure Counsel") in connection with the issuance of the Bonds is hereby approved. The City Attorney is hereby authorized to negotiate and execute contractual agreements with Co-Bond Counsel and Disclosure Counsel in connection with the issuance of the Bonds.

The retention of the firm of Public Resources Advisory Group as financial advisor to the City (the "Financial Advisor") on this issuance is hereby approved. The Finance Director is hereby authorized to negotiate and execute contractual agreements with the Financial Advisor in connection with the issuance of the Bonds.

Section 13. Payment of Costs of Issuance. The Finance Director is hereby authorized and directed to pay, or cause to be paid on behalf of the City, the costs of issuance associated with the Bonds. The Finance Director is also authorized to require that the Underwriters of the Bonds pay certain costs of issuance in connection with the purchase of such Bonds.

Section 14. Modification to Documents. Any City official authorized by this Resolution to execute any document is hereby further authorized, in consultation with the Finance Director and the City Attorney, to approve and make such changes, additions, amendments or modifications to the document or documents the official is authorized to execute as may be necessary or advisable (provided that such changes, additions, amendments or modifications shall be consistent with the parameters of Section 2 hereof). The approval of any change, addition, amendment or modification to any of the aforementioned documents shall be evidenced conclusively by the execution and delivery of the document in question.

Section 15. Ratification. All actions heretofore taken by the officials, employees and agents of the City with respect to the sale and issuance of the Bonds are hereby approved, confirmed and ratified.

Section 16. General Authority. The Mayor, the City Administrator, the Finance Director, the City Clerk, and any other officials of the City and their duly authorized deputies and agents are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents including a Continuing Disclosure Certificate, a Tax Certificate, letters of representation to any depository for the Bonds, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds, and to effectuate the purposes thereof and of the documents herein approved in accordance with this Resolution.

The Finance Director may designate in writing one or more finance or administrative officers of the City to perform any act that such Finance Director is authorized by this Resolution to perform.

Section 17. Effective Date. This Resolution shall take effect immediately upon its passage.

In Council, Oakland, California, JUN 16 2009, 2009

PASSED BY THE FOLLOWING VOTE:


AYES: - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST



LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California