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2010 JUL 15 PM 5:08

Councilmember

Approved for Form and Legality


City Attorney

OAKLAND CITY COUNCIL

Resolution No. 82916 C.M.S.

**REVISED RESOLUTION DETERMINING TO APPLY THE CITY'S
RECOVERY ZONE FACILITY BOND ISSUANCE AUTHORITY
INITIAL ALLOCATION OF \$7,581,000 AND ANY ADDITIONAL
ALLOCATIONS TO THE FINANCING OF VARIOUS FACILITIES TO
BE ACQUIRED, CONSTRUCTED AND INSTALLED BY PORTS
AMERICA OAKLAND AND DECLARING INTENT TO
ISSUE REVENUE BONDS**

WHEREAS, Section 1401 of Title 1 of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Sta. 115 (2009) (the "Federal Stimulus Act") added Section 1400U-3 to the Internal Revenue Code of 1986, as amended (the "Code"), authorizing state and local governments to issue recovery zone facility bonds ("RZFB's"), the interest on which is excludable from gross income for federal income tax purposes under the Code; and

WHEREAS, under the Federal Stimulus Act, the City of Oakland (the "City") has been allocated the authority to issue up to \$7,581,000 principal amount of Recovery Zone Facility Bonds (the "City RZFB Initial Allocation"); and

WHEREAS, by its Resolution No. 82504 C.M.S. adopted January 19, 2010, this City Council designated the entire area within the boundaries of the City as a "recovery zone" for purposes of section 1400U-1(b) of the Code; and

WHEREAS, Ports America Oakland (the "Company") operates Berths 20-24 at the Port of Oakland under a 50-year concession and lease agreement and intends to acquire, construct and install various improvements at such berths (the "Project"); and

WHEREAS, the City may issue revenue bonds (the "Bonds") to finance a portion of the costs of the Project pursuant to the City Charter of the City of Oakland or the California Industrial Development Financing Act, being Title 10 of the California Government Code, as supplemented and amended (the "Act"), or other appropriate authority; and

WHEREAS, the City expects that the Company or an entity formed by it for purposes of the financing (the "Borrower") will pay certain expenditures (the "Reimbursement Expenditures") in connection with the Project prior to the issuance of the Bonds; and

WHEREAS, the City reasonably expects that certain of the proceeds of the Bonds will be used to reimburse the Reimbursement Expenditures; and

WHEREAS, Sections 1.103-8(a)(5) and 1.150-2 of the treasury regulations promulgated under the Internal Revenue Code of 1986, as amended (the “Treasury Regulations”) require an issuer of tax-exempt obligations to declare its reasonable official intent to reimburse, from proceeds of such obligations, expenditures made prior to the issuance of such obligations; and

WHEREAS, the California Debt Limit Allocation Committee (“CDLAC”) has established procedures which require that the City submit certain documentation by August 15, 2010, including a resolution approving the project intended to be funded from proceeds of the RZFB’s, in order to avoid having the City RZFB Allocation re-allocated to another California governmental entity; and

WHEREAS, the City intends to apply for additional allocation (the “City RZFB Additional Allocation”) of authority to issue RZFB’s from CDLAC up to the amount necessary to complete the Project; and

WHEREAS, the City desires to demonstrate compliance with such CDLAC procedures; now, therefore, be it

RESOLVED, that this City Council hereby confirms that all of the above recitals are true and correct; and

FURTHER RESOLVED, the City hereby approves the application of the City RZFB Initial Allocation and any City RZFB Additional Allocation to the Bonds to be issued by the City to finance the Project; and be it

FURTHER RESOLVED, this City Council hereby declares its official intent to use proceeds of indebtedness expected to be issued in an amount of approximately \$7,581,000 to make a loan to the Borrower, a portion of which will reimburse the Borrower for Reimbursement Expenditures, which declaration is made solely for purposes of establishing compliance with the requirements of Section 1.103-8(a)(5) and Section 1.150-2 of the Treasury Regulations; and be it

FURTHER RESOLVED, that the City Council hereby authorizes the City Administrator to conduct negotiations, execute documents and take any other action necessary or desirable to further the purposes of this Resolution; and be it

FURTHER RESOLVED, that prior to execution, all contracts and agreements shall be reviewed and approved for form and legality by the Office of the City Attorney and a final copy shall be placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 20 2010, 2010

PASSED BY THE FOLLOWING VOTE:

AYES : BROOKS, DE LA FUENTE, KAPLAN, KERNIHGAN, 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