

RESOLUTION NO. 126-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA AUTHORIZING A LEASE FINANCING WITH THE RICHMOND JOINT POWERS FINANCING AUTHORITY TO FINANCE CERTAIN IMPROVEMENTS TO VARIOUS FIRE STATIONS; AUTHORIZING THE FORMS AND DIRECTING THE EXECUTION AND DELIVERY OF A SITE LEASE, A LEASE AGREEMENT, AND OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH, AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION

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 (commencing with Section 6584) (the “Marks-Roos Local Bond Pooling Act of 1985”) 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 the Marks-Roos Local Bond Pooling Act of 1985 and the Joint Powers Agreement, the Authority is authorized to lease public capital improvements being financed to local agencies whenever there are significant public benefits; and

WHEREAS, the City Council of the City of Richmond (the “City Council”) adopted Resolution 77-09 on July 21, 2009 designating all of then-current redevelopment project areas in the City as an “economic recovery zone” for purposes of issuing Recovery Zone Economic Development Bonds pursuant to Section 1401 of the American Recovery and Reinvestment Act of 2009 (the “ARRA”); and

WHEREAS, the City received an allocation directly under Section 1400U-1 of the ARRA in the amount of \$1,316,000; and

WHEREAS, the City has determined to finance certain improvements to various fire stations located in the City (the “Facilities”), which are located within the designated economic recovery zone, and has determined that such improvements will result in significant public benefits; and

WHEREAS, under the proposed financing structure, the City will lease the real property constituting the site of the Facilities, as such real property is described more fully in Appendix A attached hereto and made a part hereof (the “Site”), and the Facilities (collectively, with the Site, the “Leased Property”) to the Authority pursuant to a Site Lease to be dated as of December 1, 2010 (the “Site Lease”), between the City, as lessor, and the Authority, as lessee; and

WHEREAS, the City will then lease back from the Authority the leased Property pursuant to a Lease Agreement to be dated as of December 1, 2010 (the “Lease”), between the Authority, as lessor, and the City, as lessee; and

WHEREAS, in order to raise the funds needed for the proposed financing, the Authority will assign certain of its rights under the Site Lease and the Lease, including the right to receive and enforce payment of the lease payments that are payable by the City under the Lease, to Bank of America, N.A. (the “Bank”) under an Assignment Agreement to be dated as of December 1, 2010 (the “Assignment Agreement”), between the Authority, as assignor, and the Bank, as assignee; and

WHEREAS, there have been presented to the City Council at this meeting the proposed forms of the Site Lease and the Lease, and the City desires to authorize and direct the execution and delivery of the Site Lease and the Lease and the consummation of such financing; and

WHEREAS, all acts, conditions and things required by the California Constitution and laws of the State of California to exist, to have happened and to have been performed precedent

to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW THEREFORE, BE IT RESOLVED by the City Council as follows:

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

Section 2. Defined Terms. Capitalized terms that are used, but not defined, in this Resolution shall have the same meaning as when such terms are used in the foregoing recitals.

Section 3. Approval, Execution and Delivery of Site Lease. The proposed form of the Site Lease on file with the City Clerk is hereby approved in substantially the form presented at this meeting. The City Manager and the Finance Director of the City (each, an “Authorized Officer” and collectively, the “Authorized Officers”) are hereby severally authorized and directed, for and in the name of and on behalf of the City, to execute and deliver, and the City Clerk is hereby authorized and directed to attest, the Site Lease in substantially the form on file with the City Clerk, with such changes therein as such Authorized Officer executing and delivering such document may require or approve, such requirement or approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. Approval, Execution and Delivery of Lease. The proposed form of the Lease on file with the City Clerk is hereby approved in substantially the form presented at this meeting. The Authorized Officers are hereby severally authorized and directed, for and in the name of and on behalf of the City, to execute and deliver, and the City Clerk is hereby authorized and directed to attest, the Lease in substantially the form on file with the City Clerk, with such changes therein as such Authorized Officer executing and delivering such document may require or approve, such requirement or approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Leased Property. The Authorized Officers are hereby severally authorized to make (a) one or more properties in Appendix A and (b) any other parcel of real property or other property of the City subject to the Site Lease and the Lease to serve as the Leased Property thereunder.

Section 6. Recovery Zone Economic Development Bond Designation. The City hereby designates and elects to treat the Lease as a “recovery zone economic development bond,” authorized by Section 54AA of the Internal Revenue Code of 1986, as amended (the “Code”) and eligible for federal subsidy payments under Section 6431 of the Code. The Authorized Officers are hereby severally authorized and directed to take any action necessary to make the Lease eligible for federal subsidy payments.

Section 7. Approval of Assignment to the Bank. The proposal from the Bank to provide financing for the purposes set forth in this Resolution is hereby approved, and the acceptance of such proposal by the Finance Director of the City is hereby ratified, confirmed and approved. The City Council hereby approves the assignment by the Authority to the Bank of certain of the Authority’s rights under the Site Lease and the Lease, including the right to receive and enforce payment by the City of all lease payments due under the Lease.

Section 8. Official Actions. The Mayor, the City Manager, the Finance Director, the City Clerk and all other officers of the City are hereby severally authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, leases and other instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 9. Prior Actions Ratified, Confirmed and Approved. All actions heretofore taken by any officer or agent of the City, the City Council or the City with respect to the financing, or in connection with or related to any of the agreements referred to herein, or to the leasing or subleasing of the Leased Property, are hereby ratified, confirmed and approved.

Section 10. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 11. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

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APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

Property identified as 4801 Bayview Avenue (APN: 509-242-011) Richmond, California and described as TRACT 2638 POR LOT 2 BLK 10.

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I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond at a joint regular meeting thereof, held on December 7, 2010, by the following vote:

AYES: Councilmembers Butt, Lopez, Rogers, Viramontes, Vice Mayor Ritterman, and Mayor McLaughlin
NOES: None.
ABSTENTIONS: None.
ABSENT: Councilmember Bates.

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. 126-10**, finally passed and adopted by the City Council of the City of Richmond at a joint regular meeting held on December 7, 2010.