

**RESOLUTION NO. 48-14**

**A RESOLUTION OF THE CITY COUNCIL APPROVING THE SALE OF AN OPTION TO ENTER INTO AN INTEREST RATE SWAP AGREEMENT BY THE RICHMOND JOINT POWERS FINANCING AUTHORITY IN CONNECTION WITH THE RICHMOND JOINT POWERS FINANCING AUTHORITY LEASE REVENUE REFUNDING BONDS (CIVIC CENTER PROJECT), SERIES 2009; APPROVING THE FORMS AND THE EXECUTION AND DELIVERY OF A NEW CONFIRMATION UNDER AN EXISTING SWAP AGREEMENT AND CERTAIN DOCUMENTATION RELATED THERETO AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF A SECOND AMENDMENT TO INDENTURE; AND AUTHORIZING THE TAKING OF ALL NECESSARY ACTIONS RELATING THERETO**

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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 (the "JPA Law") 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 Successor Agency to the Richmond Community Redevelopment Agency, formerly known as the Richmond Redevelopment Agency; and

WHEREAS, pursuant to 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; and

WHEREAS, in accordance with the JPA law, the City has requested, and it furthers the public purpose for, the Authority to assist 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"); and

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

WHEREAS, the City subsequently refinanced the Civic Center Project through the issuance by the Authority of \$89,795,000 of its Richmond Joint Powers Financing Authority 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, the scheduled payment of principal and interest on the Series 2009 Bonds was guaranteed under a financial guaranty insurance policy issued by Assured Guaranty Corp. (the "Series 2009 Bond Insurer"); and

WHEREAS, interest rates are at sufficiently low levels that the City has determined it would be fiscally prudent to request the Authority to refinance the Series 2009 Bonds; and

WHEREAS, the Series 2009 Bonds are subject to redemption at the option of the Authority on any date on or after August 1, 2019 but the negative arbitrage that would be incurred in connection with issuing advance refunding bonds under current market conditions to refinance the Series 2009 Bonds would substantially offset the potential savings generated by such a transaction; and

WHEREAS, in connection with the proposed refunding of the Series 2009 Bonds and in compliance with the Swap Policy, the City deems it necessary and desirable to request the Authority to sell a cash-settled option to the Counterparty to enter into an interest rate swap transaction (the "2014 Swaption Transaction") to be evidenced by a new Confirmation to be entered into pursuant to the Swap Agreement (the "2014 Swaption Confirmation") thereby allowing the City to capture the approximate value of the Authority's optional early redemption rights with respect to the Series 2009 Bonds without incurring the prohibitive negative arbitrage cost currently associated with an advance refunding; and

WHEREAS, the 2014 Swaption Transaction will be structured to contain both an off-market component and an embedded loan from the Counterparty to the Authority, and will include the payment by the Counterparty to the Authority of a large upfront amount (the "Upfront Payment"); and

WHEREAS, if on August 1, 2019 the option set forth in the 2014 Swaption Transaction is not exercised by the Counterparty, then no payment shall be due to the Counterparty from the Authority, and if on August 1, 2019, the option is exercised by the Counterparty, a cash settlement amount will be due from the Authority to the Counterparty as provided in the Swap Agreement and the 2014 Swaption Confirmation, which cash settlement amount may be substantial and may be substantially higher than the amount of the Upfront Payment paid by the Counterparty to the Authority upon the execution of the 2014 Swaption Confirmation; and

WHEREAS, the 2014 Swaption Transaction will be subject to early termination upon the occurrence of certain events of default and termination events as set forth in and pursuant to the terms of the Swap Agreement and the 2014 Swaption Confirmation, and upon any such early termination, the Authority may owe a termination amount to the Counterparty, which amount may be substantial and may be substantially higher than the amount of the Upfront Payment paid by the Counterparty to the Authority upon the execution of the 2014 Swaption Confirmation; and

WHEREAS, the existence of the off-market component of the 2014 Swaption Transaction and the embedded loan therein substantially increases both (a) the likelihood that the Authority will owe a cash settlement amount on August 1, 2019 or a termination amount on any early termination date and (b) the expected amount of such cash settlement amount or termination amount; and

WHEREAS, in connection with entering into the 2014 Swaption Confirmation, the City and the Authority have determined that it is necessary and desirable to make a clarifying amendment to the Indenture; and

WHEREAS, in order to pay any cash settlement amount or termination amount, the Authority intends to use the savings generated by refunding the Series 2009 Bonds; provided however, that its obligation to pay such amounts will not be limited to payment from such savings and will be due and payable in accordance with the terms of the Swap Agreement and the 2014 Swaption Confirmation; and

WHEREAS, based on current market conditions, estimates of The Majors Group, as swap advisor to the Authority, indicate that the savings generated by refunding the Series 2009 Bonds in 2019 to be in excess of the cash settlement amount that is expected to be payable by the Authority to the Counterparty pursuant to the 2014 Swaption Transaction; and

WHEREAS, pursuant to Section 5922 of the California Government Code ("Section 5922"), the 2014 Swaption Transaction is designed to reduce the amount of interest rate risk or result in a lower cost of borrowing in combination with the proposed refinancing of the Series 2009 Bonds; and

WHEREAS, there have been presented to this meeting the proposed forms of 2014 Swap Amendment and Second Amendment to Indenture, dated as of June 1, 2014 (the “Second Amendment to Indenture”), by and between the Authority and Zions First National Bank, as trustee with the consent of the Series 2009 Bond Insurer, the City and the Counterparty; and

WHEREAS, Tamalpais Advisors, Inc. and The Majors Group are serving as financial advisor and swap advisor, respectively, to the City and the Authority and Orrick, Herrington & Sutcliffe LLP is serving as special counsel to the City and the Authority in connection with the transaction; and

WHEREAS the Authority has appointed The Majors Group as its Qualified Independent Representative within the meaning of and meeting the requirements of the Commodity Exchange Act and the rules and regulations thereunder (collectively, the “CEA”), and has been advised and is being advised by The Majors Group with respect to the 2014 Swaption Transaction, the 2014 Swaption Confirmation and the CEA compliance; and

WHEREAS, the upfront payment is intended to offset the general fund’s obligation to pay debt service to the extent permitted by the tax law; and

WHEREAS, this Council has been presented with, and has examined and approved the form of, each document referred to herein and desires to authorize and direct the execution of such documents and the consummation of the 2014 Swaption Transaction; and

WHEREAS, the Authority has full legal right, power and authority under the laws of the State of California to enter into the 2014 Swaption Transaction hereinafter authorized; and

WHEREAS, being fully advised in the matter of the 2014 Swaption Transaction, the 2014 Swaption Confirmation and CEA compliance, including without limitation, the off-market component of the 2014 Swaption Transaction, the embedded loan from the Counterparty to the Authority therein, the large Upfront Payment from the Counterparty to the Authority upon the execution thereof, the likelihood that the Authority will owe a cash settlement amount to the Counterparty upon the exercise by the Counterparty of the option and that the cash settlement amount or any termination amount payable by the Authority to the Counterparty may be substantial and may be substantially higher than the Upfront Payment paid by the Counterparty to the Authority upon the execution of the 2014 Swaption Confirmation, this Council wishes to proceed with implementation of said transaction; and

WHEREAS, all acts, conditions and things required by the 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 transaction authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Authority is now duly authorized and empowered, pursuant to each and every requirement of law, to authorize the execution and delivery of certain documents in order to further implement the transaction in the manner and upon the terms herein provided:

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 sale by the Authority of an option to the Counterparty to enter into an interest rate swap transaction to be evidenced by the 2014 Swaption Confirmation. The 2014 Swaption Transaction presented to this meeting is hereby approved.

Section 3. The proposed form of the 2014 Swaption Confirmation on file with the City Clerk is hereby approved with such changes therein as the Authority may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. Pursuant to Section 5922, the Council hereby determines that the 2014 Swaption Transaction is designed to reduce the amount of interest rate risk or result in a lower cost of borrowing in combination with the proposed refinancing of the Series 2009 Bonds.

Section 5. The proposed form of Second Amendment to Indenture 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 Second Amendment to Indenture 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 6. 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 transaction, including, but not limited to, the execution and delivery of any certificate, consent, request, approval, notice, amendment, confirmation, supplement or revision permitted or required to be delivered pursuant to the documents authorized hereby or otherwise as may be necessary or desirable in connection with this transaction, including, but not limited to, the execution and delivery of a tax certificate and any amendments to any documents relating to the Series 2009 Bonds and any documents required by the Counterparty related to the requirements of the CEA 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, including obtaining any consent required by the Series 2009 Bond Insurer and the payment of any fees related thereto. All actions heretofore taken by the officers and agents of the City with respect to the transaction 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 7. 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 transaction, 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 Council, 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 8. This Resolution shall take effect from and after its adoption.

