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South Bayside Waste Management Authority

RESOLUTION NO. 2009-21

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY AUTHORIZING THE ISSUANCE OF SOLID WASTE ENTERPRISE REVENUE BONDS (SHOREWAY ENVIRONMENTAL CENTER) SERIES 2009A AND SOLID WASTE ENTERPRISE SUBORDINATE REVENUE BONDS (SHOREWAY ENVIRONMENTAL CENTER) SERIES 2009B (TAXABLE), AUTHORIZING AND DIRECTING EXECUTION OF CERTAIN DOCUMENTS RELATING THERETO, AUTHORIZING THE SALE OF BONDS AND REFUNDING OF CERTAIN PRIOR OBLIGATIONS, APPROVING AN OFFICIAL STATEMENT AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO

WHEREAS, the South Bayside Waste Management Authority (the "Authority") a joint powers authority, operating and acting pursuant to the laws of the State of California, and is authorized pursuant to the Joint Exercise of Powers Act (commencing with Section 6500 of the California Government Code), including the Marks Roos Local Bond Pooling Act of 1985 (commencing with Section 6584 of the California Government Code) (the "Act") to borrow money for the purpose of financing projects of the Authority; and

WHEREAS, certain public agencies (the "Member Agencies") entered into a Joint Exercise of Powers Agreement pursuant to the Act in December 2000, as modified by a First Amended and Restated Joint Exercise of Powers Agreement dated as of December 14, 2005 (the "Agreement"), establishing the Authority for the purpose, among others, of having the Authority issue its obligations to be used to finance the development, acquisition, construction and improvement of certain public capital improvements; and

WHEREAS, in order to finance the development, acquisition and construction of certain improvements to the Authority's Solid Waste and Recycling Facilities (the "Project"), the Authority has decided to issue its Solid Waste Enterprise Revenue Bonds (Shoreway Environmental Center) Series 2009A (the "Series A Bonds") in an aggregate principal amount not to exceed \$56,500,000, secured by Net Revenues of its solid waste and recyclables collection, processing and disposal facilities (the "Enterprise") and its Solid Waste Enterprise Subordinate Revenue Bonds (Shoreway Environmental Center) Series 2009B (Taxable) (the "Series B Bonds" and, with the Series A Bonds, the "Bonds") in an aggregate principal amount not to exceed \$3,000,000, secured by Subordinate Net Revenues of the Enterprise), as provided herein; and

WHEREAS, pursuant to the Agreement the Authority will own and cause to be operated the Project for the benefit of the Member Agencies; and

WHEREAS, the Project constitutes a public capital improvement, as that term is defined in the Act; and

WHEREAS, pursuant to the Agreement, so long as bonds of the Authority remain outstanding, the Member Agencies have agreed to designate the Authority's solid waste facility as the disposal and processing location for solid waste, recyclable materials and plant materials/organics generated and collected pursuant to each Member Agency's solid waste collection franchise agreement; and

WHEREAS, revenues collected by the Authority as a result of solid waste tipping fees charged on tonnage delivered to the Authority's solid waste facility and from the sale of recyclable materials recovered therefrom (the "Revenues"); and,

WHEREAS, the Authority has determined that the approval of financing for the Project is not "a project" within the meaning of the California Environmental Quality Act; and

WHEREAS, the City of San Carlos, as the Member Agency in which the Project is located, has approved the financing of the public capital improvements and made a finding of significant public benefit after a public hearing, all in accordance with Section 6585.5 of the Act;

WHEREAS, in order to provide for the authentication and delivery of the Series A Bonds, to establish and declare the terms and conditions upon which the Series A Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and premium, if any, thereon, the Authority has authorized the execution and delivery of an Indenture of Trust (the "Series A Indenture"), currently dated as of July 1, 2009 between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"); and

WHEREAS, in order to provide for the authentication and delivery of the Series B Bonds, to establish and declare the terms and conditions upon which the Series B Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and premium, if any, thereon, the Authority has authorized the execution and delivery of an Indenture of Trust (the "Series B Indenture" and, with the Series A Indenture, the "Indentures"), currently dated as of July 1, 2009 between the Authority and the Trustee, and a use of funds agreement (the "Use of Funds Agreement"), to be dated the date of the Purchase Contract (defined below) with any Member Agency interested in purchasing such Series B Bonds (the "Purchasers"); and

WHEREAS, the Authority proposes to sell the Series A Bonds to Banc of America Securities, LLC (the "Underwriter") for offer and sale by the Underwriter to members of the general public, and in connection with the offering of the Series A Bonds, the Authority has caused to be prepared an Official Statement describing, among other things, the Authority, the Indenture, the Net Revenues and the Series A Bonds, a preliminary form of which is on file with the Secretary of the Authority; and

WHEREAS, the Series A Bonds will be sold pursuant to the Purchase Contract (the "Purchase Contract") to be dated the date of sale, between the Authority and the Underwriter, and the Series B Bonds will be sold to the Purchasers pursuant to the Use of Funds Agreement; and

WHEREAS, the Authority and the Trustee have previously entered into an Indenture of Trust, dated as of March 1, 2000 (the "Original Indenture"), pursuant to which the Authority issued its South Bayside Waste Management Authority Solid Waste System Revenue Bonds, Series 2000 (the "Series 2000 Bonds"); and

WHEREAS, the optional redemption provisions contained in Section 4.02(a) of the Original Indenture contain a drafting error, and the Authority and the Trustee desire to enter into a First Amendment to Indenture of Trust, dated as of July 1, 2009 (the "First Amendment"), pursuant to the provisions of Section 11.01(b) of the Original Indenture, in order to amend certain provisions of the Original Indenture to cure such provisions; and

WHEREAS, in order to provide for the redemption of the Series 2000 Bonds, the Authority has authorized the execution and delivery of Escrow instructions, currently dated as of July 1, 2009 (the "Escrow Instructions") to the Trustee, as trustee for the Series 2000 Bonds; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, requires the Board of the Authority, the host jurisdiction of the Project, to approve the issuance of the Bonds after a public hearing has been held following reasonable notice; and

WHEREAS, a public hearing was held by the Board of Directors of the Authority on the 23rd day of July, 2009, at the hour of 2:00 p.m., at 610 Elm St., Conference Room A/B, San Carlos, California, following duly published notice thereof, and all persons desiring to be heard have been heard; and

WHEREAS, it is in the public interest and for the public benefit that the Board of Directors of the Authority, as the representative of the Authority, the host jurisdiction of the Project, approve the issuance and delivery by the Authority of the Bonds; and

WHEREAS, the Authority has duly considered such transactions, including, without limitation, the Indentures, the Purchase Contract, the Use of Funds Agreement, the Escrow Instructions, the Deposit Agreement, the Continuing Disclosure Certificate and the Official Statement, and wishes at this time to approve said transactions in the public interests of the Authority.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the South Bayside Waste Management Authority as follows:

Section 1. Issuance of Bonds; Approval of Indentures. The findings set forth in the recitals hereof are true and correct. The Authority hereby authorizes the issuance of the Series A Bonds under and pursuant to the Act and the Series A Indenture, and the issuance of the Series B Bonds under and pursuant to the Act and the Series B Indenture, for the purposes hereinbefore described. The Authority hereby approves the Indentures in substantially the forms on file with the Secretary together with any additions thereto or changes therein deemed necessary or advisable by the Chair, the Executive Director, or their authorized representatives (collectively, the "Authorized Officers"), upon consultation with Authority Counsel and Nossaman LLP ("Bond Counsel"), whose execution thereof shall be conclusive evidence of the approval of any such additions and changes. Such changes and additions shall include, without limitation, the insertion in the Indentures of the final annual maturities and final aggregate principal amount of the Bonds and the final annual interest rates payable with respect to the Bonds. Each of the Authorized Officers are hereby authorized and directed to execute the final form of the Indentures for and in the name and on behalf of the Authority. The Authority hereby authorizes the delivery and performance of the Indentures, provided that (i) the maturity of the Series A Bonds does not exceed 28 years, the true interest cost of the Series A Bonds does not exceed 6.75%, and the principal amount of the Series A Bonds does not exceed \$56,500,000 (provided, that in the event Series B Bonds are issued, the total principal amount of Series A Bonds authorized hereby shall be reduced by the principal amount of such Series B Bonds), and (ii) the maturity of the Series B Bonds does not exceed five (5) years, the interest rate on the Series B Bonds does not exceed five percent (5.00%), and the principal amount of the Series B Bonds does not exceed \$3,000,000.

Pursuant to the Act, the Board hereby finds and determines that the issuance of the Bonds will result in savings in effective interest rates, bond underwriting costs and bond issuance costs, and will provide for more efficient delivery of local agency services to residential and commercial development, and thereby result in significant public benefits to the Member Agencies within the contemplation of Section 6586 of the Act.

Section 2. Purchase Contract. The Authority hereby authorizes the sale of the Series A Bonds to the Underwriter pursuant to and in accordance with the Purchase Contract, in substantially the form on file with the Secretary together with any additions thereto or changes therein approved

by Authorized Officers, the execution thereof to be conclusive evidence of such approval. The Authority hereby delegates to each of the Authorized Officers, the authority to accept an offer from the Underwriter to purchase the Series A Bonds from the Authority pursuant to the Purchase Contract. Each of the Authorized Officers are hereby authorized and directed to execute the final form of the Purchase Contract for and in the name and on behalf of the Authority.

Section 3. Use of Funds Agreement. The Authority hereby authorizes the sale of the Series B Bonds to the Purchasers pursuant to and in accordance with the Use of Funds Agreement, in substantially the form on file with the Secretary together with any additions thereto or changes therein approved by Authorized Officers, the execution thereof to be conclusive evidence of such approval. The Authority hereby delegates to each of the Authorized Officers the authority to accept an offer from the Purchasers to purchase the Series B Bonds from the Authority pursuant to a Use of Funds Agreement with each such Purchaser. Each of the Authorized Officers are hereby authorized and directed to execute the final form of the Use of Funds Agreement with each Purchaser for and in the name and on behalf of the Authority.

Section 4. Deposit Agreement. The Authority hereby authorizes the receipt of the purchase price of the Series B Bonds from the Purchasers pursuant to and in accordance with the Deposit Agreement, in substantially the form on file with the Secretary together with any additions thereto or changes therein approved by Authorized Officers, the execution thereof to be conclusive evidence of such approval. Each of the Authorized Officers are hereby authorized and directed to execute the final form of the Deposit Agreement with each Purchaser for and in the name and on behalf of the Authority.

Section 5. Approval of Continuing Disclosure Certificate. The form of Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"), between the Authority and the Trustee, acting as dissemination agent, as presented to this meeting is hereby approved. An Authorized Officer is hereby authorized and directed, for and on behalf of the Authority, to execute, acknowledge and deliver the Continuing Disclosure Certificate, in substantially the form presented to this meeting, with such changes therein as such Authorized Officer may require or approve, with the advice and approval of Authority Counsel and Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. Approval of Escrow Instructions; Refunding of Series 2000 Bonds. The Series 2000 Bonds are hereby designated for redemption prior to maturity from available funds of the Authority. The form of Escrow Instructions from the Authority to the Trustee, acting as trustee for the Series 2000 Bonds, as presented to this meeting is hereby approved. An Authorized Officer is hereby authorized and directed, for and on behalf of the Authority, to execute, acknowledge and deliver the Escrow Instructions, in substantially the form presented to this meeting, with such changes therein as such Authorized Officer may require or approve, with the advice and approval of Authority Counsel and Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. Approval of First Amendment. The form of First Amendment between the Authority to the Trustee, acting as trustee for the Series 2000 Bonds, as presented to this meeting is hereby approved. An Authorized Officer is hereby authorized and directed, for and on behalf of the Authority, to execute, acknowledge and deliver the First Amendment, in substantially the form presented to this meeting, with such changes therein as such Authorized Officer may require or approve, with the advice and approval of Authority Counsel and Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 8. Official Statement. The Authority hereby approves the preparation of, and hereby authorizes the Authorized Officers to deem final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934 except for permitted omissions, a preliminary form of Official Statement describing the Series A Bonds. Distribution of such preliminary Official Statement to prospective purchasers of the Series A Bonds is hereby approved. Each of the Authorized Officers are hereby authorized to execute the final form of the Official Statement, on behalf of the Authority, including as it may be modified by such additions thereto and changes therein as the Authorized Officers shall deem necessary, desirable or appropriate, and the execution of the final Official Statement by the Authorized Officers shall be conclusive evidence of the approval of any such additions and changes. The Authority hereby authorizes the distribution of the final Official Statement by the purchaser of the Series A Bonds.

Section 9. Official Action. The officers and staff of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions, including negotiations for purchase of bond insurance resulting in present value savings and execution and delivery of any and all assignments, certificates, requisition, agreements, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance, sale and delivery of the Bonds.

Section 10. Effective Date. This Resolution shall take effect immediately upon adoption.

NOW, THEREFORE, BE IT RESOLVED that this Resolution 2009-21 is Regularly adopted and passed this 23rd day of July, 2009, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				

I HEREBY CERTIFY that the foregoing Resolution No. 2009-21 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on July 23rd, 2009.

ATTEST:

Martha DeBry, Chairperson of SBWMA

Cathy Hidalgo, Board Secretary

APPROVED AS TO FORM:

Robert Lanzone, SBWMA Counsel