



Office of the Chief Administrative Officer

ACTION CALENDAR
April 20, 2010

To: Honorable Chairperson and Members of the Joint Powers Financing Authority
From: *PK* Phil Kamlarz, Chief Administrative Officer
Submitted by: Robert Hicks, Director, Finance
Subject: Authorizing the Execution, Sale and Delivery of Certificates of Participation for the Dona Spring Animal Shelter Project

RECOMMENDATION

Adopt a Resolution authorizing the execution, sale and delivery of not to exceed \$5,500,000 in certificates of participation, authorizing and directing execution of related lease financing documents and trust agreements, approving the form of the official statement, and authorizing official actions.

FISCAL IMPACTS OF RECOMMENDATION

Debt service payments averaging approximately \$350,000 per year for 30 years, starting in FY 2012, will be paid by a transfer from the Capital Improvement Fund (Fund 610) to the Animal Shelter Project Debt Service Fund (For a total of \$5.45 million in principal and \$5.26 million in interest payments). Through the use of capitalized interest, the debt service will be structured so that the City will not need to make a debt service payment in the first two years, and will make a small one of \$110,675 in the third year. This delay in payments will allow the City time to sell the existing property. In addition, the City expects to sell the existing property for approximately \$1.3 million to pay most of the \$1,408,518 total debt service due in years four through seven.

The City has received bids to construct a new animal shelter and total project costs (See Exhibit G) are currently estimated at \$12.6 million, \$7.2 million of which will be funded by the General Obligation Bond issued in January 2008, \$5.2 million will be funded by the proceeds of the sale of the 2010 Certificates of Participation (the "COP"), and approximately \$339,303 will be paid by other funding sources. A debt service reserve fund of approximately \$365,000 will be funded through the COP.

The security for the financing will be the annual appropriations from the Capital Improvement Fund and a lease obligation between the City and the Berkeley Joint Powers Financing Authority. Capitalized interest will offset the debt service payments in FY 2011 and FY 2012. Debt service reserve fund earnings will offset payments throughout the term of the COP.

CURRENT SITUATION AND ITS EFFECTS

Over eight years have passed since the approval of the Animal Shelter ballot measure in November 2002, and current construction costs have risen substantially. The \$7.2 million in General Obligation Bonds authorized by voters is no longer adequate to finance the current construction costs of \$12.6 million for the new animal shelter, based on bids received.

The increase in costs is due primarily to the eight-year period that elapsed from the time the bond measure was passed to the time City staff received construction bids. Other factors contributing to the increase include (1) The new site needed approximately 3,800 square feet of shelter space more than the old site (11,800 sq ft versus 8,000 sq ft), to meet ADA requirements, including an elevator, stairwells to the second floor, space for animal services volunteers, and socialization and get-acquainted space for animals to interact with prospective adopters; (2) the inclusion of a veterinary clinic for staff use only; and, (3) the City paid more than anticipated for the Bolivar site, since it was the only site commissioners and other stakeholders could agree on.

BACKGROUND

Measure I was approved by Berkeley voters in November 2002. It authorized the City Council to issue \$7.2 million in General Obligation Bonds to acquire property if necessary and construct or rehabilitate a building, for a new, larger animal shelter. The purposes of the measure were (1) to ensure that the shelter met the additional requirements which have been imposed by State law regarding the length of time animals are to be held in the shelter and related services which must be provided for them; and (2) to provide a safe working environment for staff and a community-friendly facility for the public.

As the result of a search and evaluation of alternative sites, the City purchased property at 1 Bolivar Drive on which to construct the new animal shelter. The site is located at the north end of Aquatic Park, between the Eastshore Freeway and 2nd. Street. The site was chosen because it is adjacent to Aquatic Park, affords easy access to areas for exercising and socializing animals, and is not in close proximity to any residential uses. Burks Toma Architects, a local Berkeley architectural firm, was selected to design the new animal shelter. The old building was demolished in February 2010 and construction is expected to begin in May or June 2010.

RATIONALE FOR RECOMMENDATION

There are three primary reasons for issuing the Certificates of Participation:

- The current low interest rate environment will allow the City to borrow money to complete the construction of the new animal shelter at an average interest rate of approximately 5.25%.

- Issuing the Certificates of Participation will allow for a financing structure that minimizes the Capital Improvement Fund payments for the first three years; and
- Issuing the Certificates of Participation will provide the funds in the next 75 days, in time for the City's construction plans for the new animal shelter.

ALTERNATIVES CONSIDERED

If the COPs weren't issued, the City would have to consider reducing the funding for planned capital projects over the next two years by \$3.6 million. This would represent a further reduction for parks, sidewalks/streets, and City facilities-See Animal Shelter Funding Options attached. The City might also have to eliminate the clinic build out, in order to reduce the size of the construction budget.

In addition, the General Fund would have to advance the Animal Shelter project the approximately \$1.5 million for the sale of the existing property until the property is sold. This will reduce General Fund cash flow and interest earnings.

CONTACT PERSONS

Robert Hicks, Director, Finance, 981-7300
Jim Hynes, Assistant to the City Manager, 981-2493

Attachments:

- 1: A: Resolution of the Berkeley Joint Powers Financing Authority
B Resolution of the Berkeley City Council
- 2: Exhibit C: Site Agreement
- 3: Exhibit D: Lease Agreement between the Berkeley Joint Powers Financing Authority and the City
- 4: Exhibit E: Assignment Agreement
- 5: Exhibit F: Trust Agreement
- 6: Exhibit G: Project Budget Worksheet
- 7: Exhibit H: Form of the Preliminary Official Statement
- 8: Exhibit I: Certificate Purchase Agreement
- 9: Animal Shelter Funding Options

RESOLUTION NO. _____

AUTHORIZING THE EXECUTION AND DELIVERY OF CERTIFICATES OF PARTICIPATION, AUTHORIZING AND DIRECTING EXECUTION OF RELATED LEASE FINANCING DOCUMENTS, APPROVING OFFICIAL STATEMENT AND AUTHORIZING OFFICIAL ACTIONS

WHEREAS, the City of Berkeley (the "City") is proposing to proceed with a lease financing to provide for the acquisition, construction, equipping and improvement of a new animal shelter (the "Project") and has requested the assistance of the Berkeley Joint Powers Financing Authority (the "Authority"); and

WHEREAS, on the date hereof, the City Council of the City will determine whether to provide for the execution and delivery of 2010 Certificates of Participation, (Animal Shelter Financing) (the "Certificates"), the proceeds of which would be used to finance the Project;

NOW, THEREFORE, BE IT RESOLVED as follows:

Section 1. Execution and Delivery of Certificates. Subject to City Council approval of the execution and delivery of the Certificates, the Authority hereby authorizes the execution and delivery of the Certificates, representing the right to receive lease payments under the Lease Agreement (as described below), in the aggregate principal amount of not to exceed \$5,750,000, and the execution and delivery of the following agreements (collectively, the "Agreements"):

- (a) Site and Facility Lease, by and between the City, as lessor, and the Authority, as lessee;
- (b) Lease Agreement, by and between the Authority, as sublessor, and the City, as sublessee;
- (c) Assignment Agreement, by and between The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and the Authority; and
- (d) Trust Agreement, by and among the City, the Authority and the Trustee.

Subject to City Council approval of the execution and delivery of the Certificates, the Authority hereby approves and separately authorizes the President, the Chief Administrative Officer, or the Treasurer to execute the Agreements, and the Secretary is hereby authorized and directed to attest to said Agreements, in substantially the forms on file with the Secretary, together with any changes therein or additions thereto deemed advisable by such officer, whose execution thereof shall be conclusive evidence of approval of any such additions and changes.

Section 2. Official Statement. The Authority hereby approves, and hereby deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the preliminary Official Statement describing the Certificates, in the form on file with the Secretary. Subject to City Council approval of the execution and delivery of the

Certificates, the purchaser of the Certificates is hereby authorized to distribute the Official Statement in connection with the sale of the Certificates. Subject to City Council approval of the execution and delivery of the Certificates, the President, Chief Administrative Officer, or Treasurer is hereby authorized and directed to (a) execute and deliver to the purchaser of the Certificates a certificate deeming the preliminary Official Statement to be nearly final as of its date, (b) approve any changes in or additions to cause such Preliminary Official Statement to be put in final form, and (c) execute said final Official Statement for and in the name and on behalf of the Authority.

Section 3. Official Actions. The President, Chief Administrative Officer, Treasurer, Secretary and other officials of the Authority are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution and the transaction herein contemplated. Whenever in this resolution any officer of the Authority 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 shall be absent or unavailable.

Section 4. Effective Date. This resolution shall take effect from and after the date of approval and adoption thereof.

RESOLUTION NO. _____

AUTHORIZING THE EXECUTION, SALE AND DELIVERY OF CERTIFICATES OF PARTICIPATION, AUTHORIZING AND DIRECTING EXECUTION OF RELATED LEASE FINANCING DOCUMENTS, APPROVING A PURCHASE CONTRACT AND AN OFFICIAL STATEMENT, AND AUTHORIZING OFFICIAL ACTIONS

WHEREAS, the City of Berkeley (the "City") and the Berkeley Redevelopment Agency previously authorized and executed a Joint Exercise of Powers Agreement dated as of January 11, 1994, pursuant to which there has been established the Berkeley Joint Powers Financing Authority (the "Authority") as a joint powers authority under the laws of the State of California; and

WHEREAS, the City, working together with the Authority, is proposing to proceed with a lease financing to provide for the acquisition, construction, equipping and improvement of a new animal shelter (the "Project"); and

WHEREAS, to that end, the City Council (the "Council") of the City has determined to provide for the execution and delivery of 2010 Certificates of Participation (Animal Shelter Financing) (the "Certificates"), the proceeds of which will be used to finance the Project; and

WHEREAS, for purposes of the sale of the Certificates, Jones Hall, A Professional Law Corporation, as Disclosure Counsel to the City, has caused to be prepared an Official Statement describing the Certificates, the preliminary form of which is on file with the City Clerk, and the members of the Council, with the aid of their staff, have undertaken such review of the Official Statement as hereinafter described as is necessary to assure proper disclosure of all material facts relating to the Certificates that are within the personal knowledge of Councilmembers and the staff;

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

Section 1. Execution and Delivery of Certificates. The Council hereby authorizes the execution and delivery of the Certificates, representing the right to receive lease payments under the Lease Agreement (as described below), in the aggregate principal amount of not to exceed \$5,750,000, and the execution and delivery of the following lease financing agreements (collectively with the Purchase Contract described below, the "Agreements") :

- (a) Site and Facility Lease, by and between the City, as lessor, and the Authority, as lessee;
- (b) Lease Agreement, by and between the Authority, as sublessor, and the City, as sublessee; and
- (c) Trust Agreement, by and among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee").

The true interest cost of the Certificates may not exceed 5.50% and the underwriter's discount may not exceed 1.25% of the principal amount of the Certificates.

The Council hereby approves and separately authorizes the City Manager, the Deputy City Manager or the Finance Director (each an "Authorized Officer") to execute the Agreements, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to said Agreements, in substantially the forms on file with the City Clerk, together with any changes therein or additions thereto deemed advisable by the Authorized Officer, whose execution thereof shall be conclusive evidence of approval of any such additions and changes.

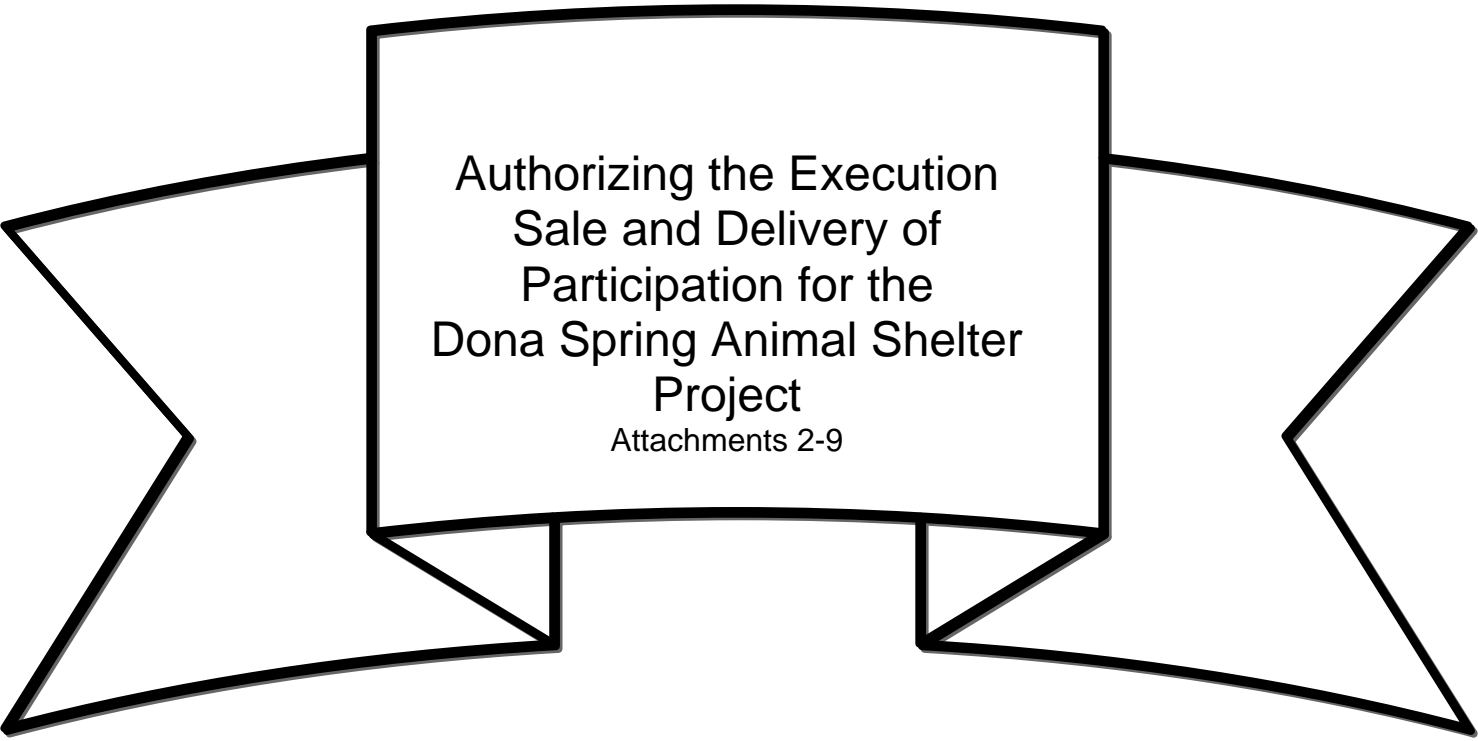
Section 2. Sale of Certificates. The Council hereby approves the sale of the Certificates by limited competitive sale, in which the City's financial advisor will identify a limited number of investment banks with which the City will negotiate. The City Manager is hereby authorized to work with the City's financial advisor to select an investment bank to purchase the Certificates. The form of a Purchase Contract to be executed by the City and the investment bank selected by the City Manager on file with the City Clerk is hereby approved. The Authorized Officer is hereby authorized to execute the Purchase Contract so long as the scale of the Certificates is consistent with the terms set forth in Section 1.

Section 3. Official Statement. The Council hereby approves, and hereby deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the preliminary Official Statement describing the Certificates, in the form on file with the City Clerk. The purchaser of the Certificates is hereby authorized to distribute the Official Statement in connection with the sale of the Certificates. The Authorized Officer is hereby authorized and directed to (a) execute and deliver to the purchaser of the Certificates a certificate deeming the preliminary Official Statement to be nearly final as of its date, (b) approve any changes in or additions to cause such Preliminary Official Statement to be put in final form, and (c) execute said final Official Statement for and in the name and on behalf of the City.

Section 4. Engagement of Professional Services. The Council hereby approves the engagement for Special Counsel and Disclosure Counsel services of the firm of Jones Hall, A Professional Law Corporation, and the engagement of Northcross, Hill & Ach, Inc., for financial advisory services, each pursuant to previously approved agreements.

Section 5. Official Actions. The Authorized Officer, the City Clerk and all other officers of the City are each authorized and directed in the name and on behalf of the City in accordance with the City Charter to make any and all assignments, certificates, requisitions, agreements, notices, consents, 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 documents approved pursuant to 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 shall be absent or unavailable.

Section 6. Effective Date. This resolution shall take effect from and after the date of approval and adoption thereof.



Authorizing the Execution
Sale and Delivery of
Participation for the
Dona Spring Animal Shelter
Project
Attachments 2-9

Please refer to item #34 in the 4/20/2010 Regular Council Meeting agenda for attachments 2-9. All report materials can also be accessed online at www.cityofberkeley.info and are on file in the City Clerk Department.

City Clerk Department

2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site
<http://www.cityofberkeley.info>

