

RESOLUTION 09-10

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALBANY, STATE OF CALIFORNIA, AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT AND DELIVERY OF A NOTE FOR THE PURPOSE OF FINANCING THE COSTS OF ACQUIRING AND CONSTRUCTING STORM DRAIN IMPROVEMENT PROJECTS, AND RELATED MATTERS, AND AMENDING RESOLUTION No. 09-7

WHEREAS, the City is a charter city and municipal corporation, duly established and authorized to exercise all municipal affairs powers under and pursuant to the provisions of the Constitution of the State of California; and

WHEREAS, on June 6, 2006, an election was held on the question of whether a parcel tax should be levied on taxable real property in the City for the purpose of funding necessary improvements such as the repair and rehabilitation of streets and storm drains, including the payment of principal and interest on lease financings and similar instruments which fund such projects (the "Parcel Tax Measure"); and

WHEREAS, at said election more than the requisite two-thirds of those voting approved the Parcel Tax Measure; and

WHEREAS, on March 16, 2009, the City Council adopted Resolution No. 09-7, entitled: "A Resolution of the City Council of the City of Albany, State of California, Authorizing the Issuance of Parcel Tax Bonds, for the Purpose of Financing the Costs of Acquiring and Constructing Storm Drain Improvement Projects, Approving an Official statement, and Related Matters" (the "Approving Resolution"); and

WHEREAS, in the Approving Resolution, the issuance of City of Albany Parcel Tax Bonds, Election of 2006, Series A (Storm Drain Projects) (the "Bonds") was authorized in the principal amount of not to exceed \$3,700,000, to be sold by the City to Wulff Hansen & Co. ("Wulff Hansen"), at a maximum interest rate of 6.5%; and

WHEREAS, after the adoption of the Approving Resolution, Wulff Hansen learned that the City could achieve a lower rate of interest by privately placing the entire Bond issue approved in the Approving Resolution with one institutional buyer, if the Bonds were to be delivered in the form of a loan, evidenced by a note (the "Loan") rather than the sale of the Bonds by means of a conventional marketing of the Bonds; and

WHEREAS, the City, after due investigation and deliberation, has determined that it is in the interests of the City at this time to provide for the incurrence of the Loan pursuant to this Resolution and the Loan Agreement (as defined in Section 5), which will be evidenced by a note (the "Note") for the purpose of acquiring and constructing storm drain system improvements

(the "Storm Drain Projects"), funding a reserve fund for the Loan, and to pay costs of issuance incurred in connection with the incurrence of the Loan; and

WHEREAS, the City Council of the City wishes at this time to authorize all proceedings relating to the incurrence of the Loan and issuance of the Note, and to approve the execution and delivery of all agreements and documents relating thereto.

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

1. Adoption of Authorizing Procedures. The City Council hereby authorizes the Loan to be incurred and the Note to be issued pursuant to the powers of the City with respect to municipal affairs in accordance with Section 1.05 of the City Charter and Section 5 of Article XI of the California Constitution. The Loan shall be incurred and the Note shall be issued in accordance with the procedures specified in Article 4 (commencing with Section 6584, but excluding Sections 6586 through 6586.7 thereof) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, which are hereby adopted as the procedures to be followed in the incurrence of the Loan and the issuance of the Note, with full force and effect as though the City were an "Authority" under and as defined therein.

2. Incurrence of the Loan. The City Council hereby authorizes and approves the incurrence of the Loan and the issuance of the Note to evidence the Loan, to be denominated "City of Albany Parcel Tax Note, Election of 2006, Series A (Storm Drain Projects)", so long as the principal amount of the Loan does not exceed \$3,465,155.81.

3. Purposes. The purposes for which the Loan are proposed to be incurred are to provide funds to acquire and construct the Storm Drain Projects, fund a reserve fund for the Loan and Note, and pay costs of issuance in connection therewith.

4. Parcel Tax Note. The Loan and Note shall be payable exclusively from tax revenues received by the City under the Parcel Tax Measure ("Parcel Tax Revenues"). Such revenues constitute a trust fund for the security and payment of the principal or redemption price of and interest on the Loan and Note. The general fund of the City is not liable and the credit or taxing power of the City is not pledged for the payment of the principal or redemption price of and interest on the Loan and Note, other than Parcel Tax Revenues. The Lender may not compel the exercise of the taxing power by the City or the forfeiture of its property, the principal or redemption price of and interest on the Loan and Note are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues except the Parcel Tax Revenues. The Note shall be dated the date the Loan is made to the City, shall bear interest at a rate of interest equal to 4.6% per annum, shall mature on August 1, 2021, shall be issued in the form, shall be subject to redemption, and shall otherwise be issued on the terms and conditions, all as set forth in the Loan Agreement and in accordance with this Resolution.

5. Approval of Loan Agreement. The Loan shall be incurred, and the Note shall be issued pursuant to and secured by the Loan Agreement, dated as of April 1, 2009, between Capital One Public Funding, LLC (the "Lender") and the City (the "Loan Agreement"), which is hereby referred to and incorporated herein by reference. The Loan Agreement, in substantially

the form on file with the City Clerk, is hereby approved by the City Council. The City Administrator, the Assistant City Administrator and the Finance Director (each, an "Authorized Officer") is hereby authorized and directed, for and in the name of the City, to execute and deliver the Loan Agreement in such form, together with such changes, insertions and omissions as may be approved by the City Attorney, Bond Counsel, and the Authorized Officer, such execution to be conclusive evidence of such approval; and the City Clerk is hereby authorized and directed to attest such Loan Agreement and affix the seal of the City thereto. The City Council hereby authorizes the delivery and performance of the Loan Agreement.

6. Loan Coordination. Wulff Hansen has devoted a substantial amount of time and effort assisting the City in finding the best financing available for funding the storm drain projects, including: the structuring of the financing plan, the presentation of the financing plan to Standard & Poor's Corporation - which resulted in a rating of "AA-" being assigned to the financing transaction - identifying the Lender, and negotiating a favorable rate of interest and prepayment terms on the Loan. As compensation for such efforts, a fee of \$60,640.23 shall be paid to Wulff Hansen from the proceeds of the Loan, the same amount such firm would have been paid if they had underwritten the bond issue, as approved in the Approving Resolution.

7. Approval of Escrow Agreement. The Reserve Fund established for the security of the Loan and Note shall be held and invested in accordance with the Escrow Agreement, dated as of April 1, 2009, between a bank with corporate trust powers to be selected by the Finance Director based on a competitive bid process (the "Escrow Bank") and the City (the "Escrow Agreement"), which is hereby referred to and incorporated herein by reference. The Escrow Agreement, in substantially the form on file with the City Clerk, is hereby approved by the City Council. The Authorized Officer is hereby authorized and directed, for and in the name of the City, to execute and deliver the Escrow Agreement in such form, together with such changes, insertions and omissions as may be approved by the City Attorney, Bond Counsel, and the Authorized Officer, such execution to be conclusive evidence of such approval; and the City Clerk is hereby authorized and directed to attest such Escrow Agreement and affix the seal of the City thereto. The City Council hereby authorizes the delivery and performance of the Escrow Agreement.

8. Further Authority. The officers of this City are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

9. Amendment of the Approving Resolution. The provisions of the Approving Resolution are hereby rescinded, to the extent inconsistent herewith.

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

MARGE ATKINSON
MAYOR