

Staff Summary Report



Council Meeting Date: 5/7/09

Agenda Item Number: _____

SUBJECT: Request adoption of a resolution ordering the sale of not to exceed \$56,055,000 principal amount of City of Tempe General Obligation Bonds, Series 2009A, and approving related documents.

DOCUMENT NAME: (20090507fsjh01) **BOND SERVICE ADMINISTRATION (0203-01)** Resolution No. 2009.37.

SUPPORTING DOCS: Yes

COMMENTS: The issuance of the not to exceed \$56,055,000 in general obligation bonds is in accordance with the capital improvement program budget as adopted by the City Council. The bonds provide financing for a variety of projects including continuing expansion and/or improvement of the 91st Ave Wastewater Treatment Plant and the Johnny G. Martinez Water Treatment Plant, various water and sewer line improvements, and other improvements. Financing is also provided for police radio, computer-aided dispatch, records management, and field report writing systems; police/courts building renovation and chiller improvements; fire support services facility acquisition; street improvements, museum renovation, and various park improvements.

PREPARED BY: Jerry Hart, Financial Services Manager (8505)

REVIEWED BY: N/A

LEGAL REVIEW BY: N/A

FISCAL NOTE: The debt service on these bonds will be paid out of the Water/Wastewater and General Obligation Debt Service funds.

RECOMMENDATION: Staff recommends approval of Resolution No. 2009.37.

ADDITIONAL INFO: N/A

RESOLUTION NO. 2009.37

RESOLUTION ORDERING THE SALE OF \$56,055,000 PRINCIPAL AMOUNT OF CITY OF TEMPE GENERAL OBLIGATION BONDS, SERIES 2009A; AND APPROVING RELATED DOCUMENTS.

WHEREAS, the City of Tempe plans to issue \$56,055,000 of its General Obligation Bonds, Series 2009A (the "Bonds"); and

WHEREAS, the Bonds will be sold through an on-line bidding process;

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. The Bonds are hereby ordered to be sold by an on-line bidding process pursuant to Title 35, Chapter 3, Article 3, Arizona Revised Statutes, as amended, and in accordance with the Notice Inviting Bids for the Purchase of Bonds in substantially the form presented to the Mayor and Council with such changes as the Financial Services Manager may approve. No defect or error in such Notice Inviting Bids for the Purchase of Bonds shall affect or invalidate the sale of the Bonds.

Section 2. The Financial Services Manager is hereby authorized to make such changes in the Notice as may be appropriate, including changing the amounts maturing in each year provided the aggregate principal amount does not exceed \$56,055,000, and to cause a preliminary official statement to be prepared in compliance with Section 240.15c2-12, General Rules and Regulations, Securities and Exchange Act of 1934 (the "Rule"), and is authorized to deem such preliminary official statement "final" for purposes of the Rule.

Section 3. All bids for the Bonds will be received through Thomson Financial's PARITY® System. The Financial Services Manager shall cause an official bid form to be created for the electronic bidding. The City will assume no responsibility for the proper functioning of the PARITY® System, for any error contained in any bid submitted electronically, or failure of any bid to be transmitted, received or opened at the official time for receipt of bids.

PASSED AND ADOPTED on May 7, 2009.

CITY OF TEMPE, ARIZONA

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

\$56,055,000
CITY OF TEMPE, ARIZONA
GENERAL OBLIGATION BONDS
SERIES 2009A

NOTICE INVITING BIDS FOR THE PURCHASE OF BONDS

NOTICE IS HEREBY GIVEN that unconditional bids will be received to and including the hour of 10:00 a.m., Pacific Daylight Time ("PDT") on May 28, 2009, only through the facilities of PARITY® by the City of Tempe, Arizona (the "City"), for the purchase of all, but not less than all, of \$56,055,000 aggregate principal amount of its General Obligation Bonds, Series 2009A (the "Bonds"). Submission of bids is further discussed below. The Financial Services Manager will announce the bids received at such time. The Mayor and Council will meet at the hour of 7:30 p.m., on May 28, 2009 for the purpose of considering bids received and, if an acceptable bid is received, awarding the contract for the purchase of the Bonds.

The City reserves the right to continue the date for receipt of bids. If the date for receipt of bids is continued, prior to 10:00 a.m. PDT on May 28, 2009, or prior to 10:00 a.m. PDT on the day prior to the date to which receipt of bids has been continued, the City will give notice of the continuance by PARITY® at i-Deal.com.

The Bonds will be dated June 1, 2009, and will bear interest from their date to the maturity of each of the Bonds at a rate or rates per annum of not to exceed twelve percent (12.00%). Interest on the Bonds is payable semiannually on January 1 and July 1 commencing January 1, 2010. The Bonds will mature on July 1 in the years 2010 to 2027, inclusive, in the principal amounts as follows:

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>
2010		2020	
2011		2021	
2012		2022	
2013		2023	
2014		2024	
2015		2025	
2016		2026	
2017		2027	
2018		2028	
2019		2029	

MODIFICATION OF MATURITY SCHEDULE. The City reserves the right to modify the maturity amounts in each year, in \$5,000 increments, as necessary to produce, as nearly as practicable, level annual debt service based on the interest rates bid. The maturity dates and total principal amount of the issue will not change. The winning bidder will be notified of the final maturity schedule within 24 hours of the receipt of bids.]

[Bidders may specify that the principal amount of Bonds scheduled to mature on and after July 1, 20__ be combined into a term bond maturing July 1, 20__ and be subject to mandatory redemption in accordance with the schedule above. Serial maturities converted to a term bond, as specified, must bear the same rate of interest.]

TIME FOR RECEIPT OF BIDS: Bids will be received to and including the hour of 10:00 a.m., PDT. The time maintained by PARITY® shall constitute the official time.

ELECTRONIC BIDDING PROCEDURES: Bids may be submitted only through the facilities of PARITY®. Bids must be submitted on the Official Bid Form that resides on the PARITY® system, without alteration or interlineation. Subscription to the Thomson Financial Municipal Group's BIDCOMP Competitive Bidding System is required in order to submit a bid. The City will neither confirm any subscription nor be responsible for the failure of any prospective bidder to subscribe. The City is using PARITY® as a communications media, and not as the City's agent, to conduct electronic bidding for the Bonds.

All bids made through the facilities of PARITY® shall be deemed irrevocable offers to purchase the Bonds on the terms provided in this Notice Inviting Bids for the Purchase of Bonds and shall be binding upon the entity making the bid. The City and Financial Advisor shall not be responsible for any malfunction or mistake made by, or as result of the use of the facilities of, PARITY®, the use of such facilities being the sole risk of the prospective bidder.

If any provisions of this Notice Inviting Bids for the Purchase of Bonds shall conflict with information provided by PARITY®, as the online system provider, this Notice Inviting Bids for the Purchase of Bonds shall control. Further information about PARITY®, including any fee charged, may be obtained from BIDCOMP/PARITY, 1359 Broadway, 2nd Floor, New York, New York 10018, Attn: Customer Support (212-849-5021).

Bidders are requested to state in their bids the net interest cost to the City, as described under "AWARD AND DELIVERY" herein. All bids shall be deemed to incorporate this Notice Inviting Bids for the Purchase of Bonds in the Official Bid Form.

PURPOSE: The Bonds are being issued for the purpose of making certain improvements in the City and to pay the costs of issuance of the Bonds.

OPTIONAL REDEMPTION: Bonds maturing on or before July 1, 20__, are not subject to call for redemption prior to maturity. Bonds maturing on or after July 1, 20__ are subject to call for redemption prior to maturity, at the option of the City, in whole or in part, on any date on or after July 1, 20__, by the payment of a redemption price equal to the principal amount of each Bond called for redemption plus interest accrued to the date fixed for redemption, but without premium.

NOTICE OF REDEMPTION: So long as the Bonds are held under the book-entry-only system, notices of redemption will be sent only to DTC by mail, facsimile, wire or other generally accepted electronic means. If the book-entry-only System is discontinued, notice of redemption of any Bond will be mailed to the registered owner of the Bond or Bonds being redeemed at the address shown on the bond register maintained by the registrar not more than sixty (60) nor less than thirty (30) days prior to the date set for redemption. Failure to properly give notice of redemption shall not affect the redemption of any Bond for which notice was properly given.

REGISTRATION AND TRANSFER: [The Bank of New York Mellon Trust Company, N.A.], will serve as bond registrar and paying agent with respect to the Bonds (the "Registrar"). If the book-entry-only system is discontinued, the Registrar will administer registration and transfer of the Bonds and the Bonds will be transferable only upon the bond register to be maintained by the Registrar upon surrender to the Registrar.

PAYMENT OF BONDS: So long as the book-entry-only system is in effect, all payments of principal, interest and premium, if any, shall be paid to DTC. If the book-entry-only system is not in effect, interest on the Bonds shall be payable by check mailed on or prior to the interest payment date to the Owners of the Bonds at the addresses of such owners as they appear on the books of the Registrar on the record date (as described hereafter). Principal of, and premium, if any, on the Bonds shall be paid when due upon surrender of such Bonds at the designated corporate trust office of the Registrar (unless the Owner of the Bonds is eligible for payment by wire transfer). Upon prior written request of an Owner of at least \$1,000,000 in principal amount of Bonds outstanding or on any Bonds held by a securities depository made at least twenty (20) days prior to an interest payment date, all payments of interest and, if adequate provision for surrender is made, principal and premium, if any, shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such Owner of the Bonds.

RECORD DATE: The record date for determination of ownership for payment of interest shall be the fifteenth calendar day prior to an interest payment date. The Registrar shall pay interest to the Owners of record on the record date notwithstanding that transfers of ownership may occur on any Bond between the record date and the next interest payment date.

BOOK-ENTRY-ONLY SYSTEM: The Bonds will be issued and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as the securities depository of the Bonds for a book-entry-only system. Under the book-entry-only system, beneficial ownership interests in the Bonds will be available in book-entry form only through direct or indirect DTC participants.

Ownership interests in the Bonds may be purchased in principal amounts of \$5,000 or integral multiples thereof.

Transfers of beneficial ownership interest in the Bonds will be accomplished by book entries made by DTC and the DTC Participants or Indirect DTC Participants who act on behalf of the Beneficial Owners. For every transfer and exchange of a beneficial interest in the Bonds, the Beneficial Owner may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto.

DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Bond Registrar and Paying Agent and to the City and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is not a successor securities depository), physical certificates representing the Bonds will be registered in the names of the Beneficial Owners and executed and delivered. In addition, the City may determine to discontinue the system of book-entry-only transfers through DTC (or a successor securities depository). In such event, physical certificates representing the Bonds will be registered in the names of the Beneficial Owners and executed and delivered. Upon registration of Bonds in the Beneficial Owner's name, the Beneficial Owners will become the owners of the Bonds (the "Owners of the Bonds") for all purposes, including the receipt of principal and interest payments and notices with respect to the Bonds. See "THE BONDS-Book-Entry-Only System" in the Official Statement.

SECURITY: Principal of and interest on the Bonds are secured by a continuing, direct ad valorem tax levied against all of the taxable property located within the boundaries of the City without limit as to rate or amount.

INTEREST RATES: Bids for the purchase of the Bonds must state the rate or rates of interest to be paid and no bid at a price less than the par value of the Bonds, together with all accrued

interest thereon at the date of delivery of the Bonds, will be considered. All Bonds of the same maturity must bear the same rate of interest. The highest rate bid shall not exceed the lowest rate by more than _____% per annum. Bids must be expressed in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent. Interest will be calculated on the basis of a year comprised of 360 days consisting of twelve (12) months of thirty (30) days each.

Any interest rate bid which would result in an interest payment amount having fractional cents will be deemed a waiver of the right to payment of such fractional cents. No fractional cents will be paid or accumulated for payment on any Bond.

MAXIMUM NET PREMIUM AND INFORMATION TO BE PROVIDED BY WINNING BIDDER: The Bonds may not be reoffered to produce a Net Premium (as hereinafter defined) associated with the Bonds in excess of \$1,121,100. **REOFFERING THE BONDS AT A NET PREMIUM IN EXCESS OF \$1,121,100 WILL CAUSE THE BONDS TO BE INVALID.** The term "Net Premium" means the difference between the par amount of the Bonds and the issue price of the Bonds determined pursuant to United States Treasury Regulations. The issue price of the Bonds is the aggregate of the issue price of each maturity of the Bonds. The issue price of each maturity of the Bonds is that initial offering price to the public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) at which a substantial amount of Bonds of that maturity (at least 10% of such maturity) are reasonably expected to be sold as of the date of the award.

The winning bidder will be required to furnish to the City, within twenty-four (24) hours after the award of the Bonds, a certificate in a form acceptable to Bond Counsel stating that a bona fide public offering of the Bonds has been made and setting forth the offering prices at which a substantial amount of the Bonds of each maturity is reasonably expected to be sold to the public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) as of the date of the award. If the offering prices so certified cause the Net Premium to exceed \$1,121,000, the award will be cancelled, the Bonds will not be delivered to the winning bidder and the bidder's deposit (as described below) will be retained and forfeited as liquidated damages.

FORM OF BID; GOOD FAITH DEPOSIT: The prescribed form of bid for the Bonds will be available on the PARITY® system and all bids must be submitted on that form. Proposals, regardless of method of submission, shall be accompanied by a deposit in the amount of \$1,121,100, in the form of a certified or cashier's check, a wire transfer, or Financial Surety Bond (the "*Deposit*") delivered to the City prior to the time proposals will be opened. Each bidder shall be solely responsible for the timely delivery of their Deposit whether by check, wire transfer or Financial Surety Bond. Neither the City nor RBC Capital Markets Corporation (the "*Financial Advisor*") have any liability for delays in the transmission of the Deposit.

Any Deposit made by **certified or cashier's check** should be made payable to the City and delivered to _____.

Any Deposit sent via **wire transfer** should be sent to the District according to the following instructions: _____, _____, _____, ABA # _____ For credit to City of Tempe General Obligation Bonds, Series 2009, Account # _____

Contemporaneously with such wire transfer, the bidder shall send an e-mail to _____, including the following information; (i) indication that a wire transfer has been made, (ii) the amount of the wire transfer, (iii) the issue to which it applies, and (iv) the return wire instructions if such bidder is not awarded the Bonds.

Any Deposit made by the successful bidder by check or wire transfer will be retained by the City following the award of the Bonds. Any Deposit made by check or wire transfer by an unsuccessful bidder will be returned to such bidder following City action relative to an award of the Bonds.

If a **Financial Surety Bond** is used, it must be from an insurance company licensed to issue such a bond in the State of Arizona and pre-approved by the City. Such bond must be submitted to the City prior to the opening of the proposals. The Financial Surety Bond must identify each underwriter whose Deposit is guaranteed by such Financial Surety Bond. If the Bonds are awarded to an underwriter using a Financial Surety Bond, then that underwriter is required to submit its Deposit to the City in the form of a certified or cashier's check or wire transfer as instructed by the Financial Advisor not later than 10:00 A.M., PDT, on the next business day following the award. If such Deposit is not received by that time, the Financial Surety Bond may be drawn by the City to satisfy the Deposit requirement.

The Deposit received from the purchaser, the amount of which will be deducted at settlement, will be deposited by the City and no interest will accrue to the purchaser. In the event the purchaser fails to comply with the accepted proposal, said amount will be retained by the City.

The Financial Advisor to the City has reserved the right to bid on the Bonds.

CUSIP NUMBERS: CUSIP numbers will be placed on the Bonds, but neither failure to print such numbers on any Bond nor any error with respect thereto shall constitute cause for a failure or refusal by the purchaser thereof to accept delivery of and pay for the Bonds in accordance with the terms of the sale. No CUSIP number will be deemed to be part of any Bond or of the contract evidenced thereby.

RIGHT OF REJECTION: The City reserves the right in its discretion to reject any and all bids received and to waive any irregularity or informality in the bids, except that the time for receiving bids shall be of the essence.

AWARD AND DELIVERY: Unless all bids are rejected, the Bonds will be awarded to the bidder whose bid results in the lowest net interest cost to the City. The net interest cost will be determined by computing the aggregate amount of interest payable on the Bonds from their date to their respective maturity dates and by deducting therefrom any premium. Delivery of the Bonds will be made to the purchaser upon payment in Federal or immediately available funds at the offices of Gust Rosenfeld P.L.C., Phoenix, Arizona, or, at the purchaser's request and expense, at any other place mutually agreeable to both the City and the winning bidder.

CANCELLATION: Bidders are to take notice that, pursuant to Arizona law, if, within three (3) years from the award of the contract to purchase the Bonds, any person who was significantly involved in initiating, negotiating, securing, drafting or creating the contract for the purchase of the Bonds on behalf of the City becomes an employee or agent of the winning bidder in any capacity or a consultant to the winning bidder with respect to the contract for the purchase of the Bonds, the City may cancel the contract without penalty or further obligation by the City. In addition to such cancellation, the City may recoup any fees or commissions paid or due to any person who was significantly involved in initiating, negotiating, securing, drafting or creating the contract for the purchase of the Bonds on behalf of the City.

LEGAL OPINION: The Bonds are sold with the understanding that the City will furnish the purchaser with the approving opinion of Gust Rosenfeld P.L.C., Phoenix, Arizona ("*Bond Counsel*"). Said attorneys have been retained by the City as Bond Counsel and in such capacity are to render their opinion only upon the legality of the Bonds under Arizona law and on the exemption of the interest income on such Bonds from Federal and State of Arizona income taxes (see "Tax-Exempt Status" below). Fees of

Bond Counsel for services rendered in connection with such approving opinion are expected to be paid from Bond proceeds. Except to the extent necessary to issue its approving opinion as to validity of the Bonds, Bond Counsel has not been requested to examine or review and has not examined or reviewed any financial documents, statements or materials that have been or may be furnished in connection with the authorization, issuance or marketing of the Bonds and accordingly will not express any opinion with respect to the accuracy or completeness of any such financial documents, statements or materials.

TAX-EXEMPT STATUS: In the opinion of Bond Counsel under existing laws, regulations, rulings and judicial decisions, and assuming continuing compliance with certain restrictions, conditions and requirements by the City, interest income on the Bonds is excluded from gross income for purposes of calculating federal income taxes and is exempt from Arizona income taxes.

Should changes in the law cause Bond Counsel's opinion to change prior to delivery of the Bonds to the purchaser, the purchaser will not be obligated to pick up and pay for the Bonds, and the winning bidder's Deposit will be returned.

INFORMATION FROM PURCHASER: The successful bidder for the Bonds will be required to provide the City with a certificate in a form acceptable to Bond Counsel, which certificate shall state the initial offering prices at which each maturity of the Bonds were offered to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) and at which a substantial amount of the Bonds of each maturity were reasonably expected to be sold.

PRELIMINARY OFFICIAL STATEMENT DEEMED FINAL, DELIVERY OF FINAL OFFICIAL STATEMENT: The City deems the Preliminary Official Statement provided in connection with the sale of the Bonds to be final as of its date except for the omission of offering prices, selling compensation, delivery dates, terms to be specified in the winning bidder's bid, ratings, other terms depending on such matters and the identity of the winning bidder.

Within twenty-four hours after the award of the Bonds, the winning bidder must provide the City with all necessary offering price information, selling compensation information, all other terms of the sale which are depending on such matters and any underwriter information, all as may be necessary to complete the final Official Statement.

Within seven (7) business days after the award of the Bonds, the City will provide the winning bidder with up to 200 copies of the final Official Statement at no cost. The final Official Statement will be in substantially the same form as the Preliminary Official Statement with such additions, deletions or revisions as the City deems necessary.

The City will deliver at closing an executed certificate stating that as of the date of delivery the information contained in the final Official Statement, including any supplement, relating to the City and the Bonds is true and correct in all material respects and that such final Official Statement does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

NO LITIGATION AND NON-ARBITRAGE: The City will deliver a certificate to the effect that no litigation is pending affecting the issuance and sale of the Bonds. The City will also deliver an arbitrage certificate covering its reasonable expectations concerning the Bonds.

CONTINUING DISCLOSURE: In connection with the issuance of the Bonds, the City will deliver a continuing disclosure agreement for purposes of the Rule as hereinafter described and as

described in the Official Statement. For purposes of the Rule, the City is the only "obligated person" with respect to the Bonds and will agree, as described in the Official Statement, to provide or cause to be provided (i) certain annual financial information and operating data (the "Annual Information") for the preceding fiscal year, (ii) the City's audited financial statements, (iii) timely notice of the occurrence of certain material events with respect to the Bonds, and (iv) timely notice of any failure by the City to provide its Annual Information within the time specified in that agreement. See the more complete description of the agreement in the Official Statement.

ADDITIONAL INFORMATION: Copies of the Official Bid Form and Notice Inviting Bids for the Purchase of Bonds and the Official Statement will be furnished to any bidder upon request made to the Clerk of the City of Tempe, Arizona; or to RBC Capital Markets Corporation, Suite 700, 2398 E. Camelback Road, Phoenix, Arizona 85016, telephone (602) 381-5368, Financial Advisor to the City.

By _____
Clerk, City of Tempe, Arizona