



Staff Summary Report

Council Meeting Date: 5/14/09

Agenda Item Number: _____

SUBJECT: Request approval of a resolution authorizing the execution and delivery of certain agreements; approving an official statement; approving the issuance and sale of Excise Tax Revenue Obligations (not to exceed \$24,500,000), Series 2009; authorizing the taking of all other actions necessary for the immediate consummation of the transactions contemplated; and declaring an emergency.

DOCUMENT NAME: (20090514fsjh01) **BOND SERVICE ADMINISTRATION (0203-01)** Resolution No. 2009.40.

SUPPORTING DOCS: Yes

COMMENTS: The issuance of the not to exceed \$24,500,000 in Excise Tax Revenue Obligations, Series 2009, is in accordance with the capital improvement program budget as adopted by the City Council. The bonds provide financing for various water/wastewater capital projects (including the Johnny G. Martinez Water Treatment and 91st Ave. Wastewater Treatment plants) and the parking garage.

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 Debt Service funds.

RECOMMENDATION: Staff recommends approval of Resolution No. 2009.40.

ADDITIONAL INFO: N/A

RESOLUTION NO. 2009.40

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT, A TRUST AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT, AND AN OBLIGATION PURCHASE CONTRACT; APPROVING AN OFFICIAL STATEMENT; APPROVING THE ISSUANCE AND SALE OF NOT TO EXCEED \$24,500,000 EXCISE TAX REVENUE OBLIGATIONS, SERIES 2009, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN THE PURCHASE AGREEMENT; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Tempe, Arizona (the "City"), desires to finance various capital improvements (the "Project") through the execution and delivery of not to exceed \$24,500,000 Excise Tax Revenue Obligations, Series 2009, dated no earlier than June 1, 2009 (the "Obligations"), by The Bank of New York Mellon Trust Company, N.A., as Trustee (the "Trustee") pursuant to a Trust Agreement, dated no earlier than June 1, 2009 (the "Trust Agreement") between the Trustee and the City, evidencing a proportionate interest of the owners thereof in a Purchase Agreement, dated no earlier than June 1, 2009 (the "Purchase Agreement"), between the Trustee and the City; and

WHEREAS, a proposal in the form of an Obligation Purchase Contract (the "Obligation Purchase Contract") will be received from RBC Capital Markets Corporation (the "Purchaser") for the purchase of the Obligations; and

WHEREAS, proposed forms of the following documents have been filed with the City Clerk for this meeting:

- (i) the proposed form of the Purchase Agreement;
- (ii) the proposed form of the Trust Agreement;
- (iii) the proposed form of the Obligation Purchase Contract;
- (iv) the proposed form of the Continuing Disclosure Certificate (the "Continuing Disclosure Certificate") and
- (v) a preliminary form of the Official Statement relating to the Obligations (the "Preliminary Official Statement");

WHEREAS, if the Mayor or Financial Services Manager determine it to be in the best interests of the City, and if, and to the extent, the Obligations meet the requirements therefor under the Internal Revenue Code of 1986, as amended (the "Code"), the Obligations may be qualified and sold as Build America Bonds under the American Recovery & Reinvestment Act of 2009.

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

Section 1. Project Financing. It is hereby found and determined that the financing of the Project at fixed interest rates pursuant to the terms of the Purchase Agreement, the Trust Agreement and the Obligation Purchase Contract is in the best interest of and in furtherance of the purposes of the City and in the public interest.

Section 2. Approval and Terms. The City hereby approves the execution and delivery of the Obligations, as hereinafter described, by the Trustee. The Obligations shall be executed in the aggregate principal amount of not to exceed \$24,500,000. The Obligations shall be in the denomination of \$5,000 or any integral multiples thereof, shall be dated June 1, 2009, or such later date as may be set forth in the Trust Agreement, and shall bear interest from such date payable on the dates provided in the Trust Agreement, and shall be fully registered without coupons as provided in the Trust Agreement. The Obligations shall bear interest at the rates per annum set forth in the Trust Agreement and the Obligation Purchase Contract and shall mature on July 1 in some or all of the years 2010 through and including 2034. The yield on the Obligations for federal tax purposes shall not exceed 7.00% per annum.

The forms, terms, interest rates, dated date, interest payment dates, maturity dates, maturity amounts, provisions for redemption and other provisions of the Obligations and the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Trust Agreement.

Section 3. Award. The Obligations are hereby awarded to the Purchaser pursuant to the Obligation Purchase Contract.

Section 4. Approval of Documents. The Mayor is authorized and directed to determine and approve the the interest rates, dated dates, interest payment dates, maturity dates, maturity amounts, purchase price, redemption provisions and any provisions necessary in connection with the purchase of credit enhancement pursuant to Section 5 hereof, and cause the same to be set forth in the documents. The form, terms and provisions of the Purchase Agreement, the Trust Agreement, the Obligation Purchase Contract and the Continuing Disclosure Certificate, in substantially the form of such documents (including the Obligations and other exhibits thereto) presented at this meeting are hereby approved, with such final provisions, insertions, deletions and changes as shall be approved by the Mayor, the execution of each such document being conclusive evidence of such approval, and the Mayor and the Clerk are hereby authorized and directed to execute and deliver, where applicable, or approve the Purchase Agreement, the Trust Agreement, the Obligation Purchase Contract and the Continuing Disclosure Certificate and to take all action to carry out and comply with the terms of such documents.

Section 5. Obligation Insurance. The Mayor and Clerk are hereby authorized and directed to purchase municipal bond insurance, surety bonds or other credit enhancement as may be deemed appropriate and beneficial, to pay or cause to be paid all premiums attendant thereto and to enter into any obligations or agreements on behalf of the City to repay amounts paid thereon by the providers thereof.

Section 6. Official Statement. The form, of the Preliminary Official Statement (including exhibits thereto) presented at this meeting is hereby ratified, approved and confirmed. The City hereby approves, ratifies and authorizes the use by the Purchaser of copies of the Preliminary Official Statement and the final Official Statement, which shall be in substantially the form of the Preliminary Official Statement with such changes as are necessary as a result of the sale of the Obligations (the "Official Statement") in connection with the public offering and sale of the Obligations. The City hereby deems the Preliminary Official Statement as final as of its date for purposes of Rule 15c2-12 of the Securities Exchange Commission. The Financial Services Manager is hereby authorized and directed to execute, when completed, the Official Statement.

Section 7. Trustee. The City hereby requests the Trustee, to take any and all action necessary in connection with the execution and delivery of the Purchase Agreement, the Trust Agreement, the Obligation Purchase Contract and the Continuing Disclosure Certificate, the execution, delivery and sale of the Obligations and further authorizes and directs the Trustee and any trustees for any obligations on a parity with the Obligations to enter into such agreements as may be reasonable for the administration of the trusts so held.

Section 8. Pledge of Excise Taxes. Pursuant to the Purchase Agreement and the Trust Agreement, the City shall pledge its unrestricted excise, transaction, franchise, privilege and business taxes, State-shared sales and income taxes, fees for licenses and permits and State revenue-sharing, now or hereafter validly imposed by the City or contributed, allocated and paid over to the City and not earmarked by the contributor for a contrary or inconsistent purpose (the "Excise Taxes") to the amounts to come due under the Purchase Agreement and the Trust Agreement. The "Excise Taxes" include, without limitation, all fines and forfeitures but do not include the excise tax revenues collected and paid over to the City under the City's (a) .50% transaction privilege (sales) and use tax approved by the voters of the City on September 10, 1996, the use of which is restricted to improvement and operation of the public transit system of the City (the "Transportation Excise Taxes"), (b) .10% transaction privilege (sales) and use tax approved by the voters of the City on May 16, 2000, the use of which is restricted to a performing arts center in the City (the "Performing Arts Excise Taxes"), (c) 1.00% increase in the transient lodging tax on hotels approved by the voters of the City on September 10, 2002, the use of which is restricted to fund programs of the Tempe Convention and Visitor's Bureau (the "Convention and Visitor's Bureau Excise Taxes) or (d) any other similar tax restricted as to its use. The City's obligation to make the payments under the Purchase Agreement or the Trust Agreement does not constitute an obligation of the City or the State of Arizona, or any of its political subdivisions, for which the City or the State of Arizona, or any of its political subdivisions, is obligated to levy or pledge any form of ad valorem property taxation nor does the obligation to make any payments under the Purchase Agreement or the Trust Agreement constitute an indebtedness of the City or of the State of Arizona or any of its political subdivisions within the meaning of the Constitution of the State of Arizona or otherwise. The pledge of Excise Taxes is on a parity with the existing pledges of Excise Taxes as described in the Trust Agreement (the "Existing Parity Obligations").

Section 9. Continuation of Excise Tax; Rate Covenant. Pursuant to the Purchase Agreement, the City will covenant and agree that the Excise Taxes which it presently imposes will continue to be imposed in each fiscal year so that the amount of Excise Taxes, all within and for such fiscal year, shall be equal to at least three (3) times the total of the debt service payable under the Purchase Agreement and under any obligations on a parity therewith, in such

fiscal year. The City will further covenant and agree that if such receipts for any such fiscal year shall not equal three (3) times such debt service for such fiscal year, or if at any time it appears that the current fiscal year's receipts will not be sufficient to meet such fiscal year's actual debt service, the City will either impose new Excise Taxes or will increase the rates of such taxes currently imposed in order that (i) the current fiscal year's receipts will be sufficient to meet such fiscal year's debt service requirement, and (ii) the next succeeding fiscal year's receipts will be equal to at least three (3) times the next succeeding fiscal year's debt service requirement. For the purpose of this pledge, debt service will be determined as set forth in the Purchase Agreement.

Section 10. Election Under American Recovery and Reinvestment Act. If the Mayor or the Financial Services Manager determine it to be in the best interests of the City, and if, and to the extent, the Obligations meet the requirements therefor under the Code, the Obligations may be qualified and sold as Build America Obligations, with the federal tax credits paid directly to the City, and the Mayor, Financial Services Manager and all other officers and agents of the City are authorized to take any action, make any modification of the documents, enter into any agreements, make any election or certifications and pay any costs necessary to provide for, or facilitate the issue and sale of the Obligations in such manner, and to comply with the requirements of the Code and the terms of the Obligations and any agreement related thereto. Additionally, if practicable, necessary and appropriate, the Mayor, the Clerk, Financial Services Manager and the other officers and agents of the City, on behalf of the City may take all actions necessary to amend any and all documents related to the Existing Parity Obligations with respect to the determination thereunder of debt service on Obligations issued as Build America Bonds.

Section 11. Resolution Irrepealable. After any of the Obligations are delivered by the Trustee to the Purchaser thereof upon receipt of payment therefor, this resolution shall be and remain irrepealable until the Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

Section 12. Execution of Documents. The Mayor, the Clerk, the Financial Services Manager and the other officers of the City, on behalf of the City, are each hereby authorized and directed, without further order of the Council, to execute and deliver such certificates, proceedings and agreements as may be necessary or convenient to be executed and delivered on behalf of the City, to evidence compliance with, or further the purposes of, all the terms and conditions of this resolution and the consummation of the transactions contemplated by the Preliminary Official Statement.

Section 13. Ratification of Actions. All actions of the officers and agents of the City which conform to the purposes and intent of this resolution and which further the issuance and sale of the Obligations as contemplated by this resolution whether heretofore or hereafter taken are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this resolution.

Section 14. Severability. If any section, paragraph, clause or phrase of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or

unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this resolution.

Section 15. Waiver. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

Section 16. Time of the Essence. The exigencies of the municipal bond market, and the need for an immediate sale and early closing to secure the most favorable interest rates on the Obligations require that the Obligations be issued and delivered as soon as possible.

Section 17. Emergency Clause. The immediate operation of the provisions of this resolution is necessary for the preservation of the public peace, health and safety and an emergency is hereby declared to exist, and this resolution will be in full force and effect from and after its passage by the Mayor and Council and it is hereby excepted from the referendum provisions of the Constitution.

PASSED AND ADOPTED by the Mayor and Council of the City of Tempe, Arizona, this 14th day of May, 2009.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney