



Office of the City Manager

ACTION CALENDAR

September 20, 2005

To: Honorable Agency and Joint Powers Authority Chairperson and Mayor, and Members of the Agency Board, Joint Powers Financing Agency and City Council

From: *PK* Phil Kamlarz, Agency Executive Director and City Manager

Submitted by: Dan Marks, Planning and Development Director

Subject: Issuance of Redevelopment Agency Debt

RECOMMENDATION

Adopt Resolutions authorizing the issuance of West Berkeley Redevelopment Project 2005 Refunding Tax Allocation Bonds by the City of Berkeley Redevelopment Agency in an amount not to exceed \$8,300,000, to refund outstanding prior Agency bonds and generate additional project funding.

FISCAL IMPACTS OF RECOMMENDATION

The resolutions of the Redevelopment Agency (“Agency”), Joint Powers Financing Authority (“Authority”) and City (“City”) will allow for the issuance of new West Berkeley Redevelopment Project 2005 Tax Allocation Bonds to refund existing 1996 and 1997 Tax Allocation Bonds in an amount not to exceed \$8,300,000. The proposed refunding bonds will be structured to take advantage of the extended debt horizon enabled by the City and Agency resolutions approved on May 24, and July 12, 2005, eliminating the time limit to incur debt and extending the plan limits of the West Berkeley Redevelopment Plan to 2015. The 1996 and 1997 Bonds have \$2,600,000 and \$3,440,000 outstanding, respectively, which will be refunded in full by the proposal on or around December 1, 2005. Based upon current market conditions, it is anticipated that refunding outstanding Agency debt will result in measurable savings over the existing 1996 and 1997 Bond’s debt service. The refunding will generate an additional \$1 million to \$1.5 million to complete various affordable housing projects. The existing tax increment revenues of \$1,350,000 per year will fully support the approximately \$900,000 in annual debt service on the new bond.

CURRENT SITUATION AND ITS EFFECTS

This report and the accompanying resolutions are a continuation of the actions taken on May 24, 2005 and July 12, 2005 by the City Council and Agency Board. On May 24, 2005, the City and Agency eliminated the time limit on incurring debt (Ord. No. 6,860 N.S.). Also on this date, and on July 12, 2005, the City and Agency extended the Plan Limit and Time Limit of the Agency pursuant to California Health and Safety Code Sections 33333.6(e)(2)(B) and 33333.6(e)(2)(C) to 2015, allowing for an extended time frame for the issuance of debt and its repayment (Ord. No. 6,861 N.S. and Ord. No. 8,532 N.S.). The elimination of time limit to incur debt allows the City and Agency to move forward with refunding options. The time extensions, in combination with the existing market conditions, should create a situation in which measurable savings and

cash for affordable housing projects can both be achieved through the issuance of debt authorized by the attached resolutions.

In order to make the new bond issuance as efficient as possible, Piper Jaffray, the underwriter selected for negotiated purchase of the bonds, will issue the new Tax Allocation Bonds of the Agency for concurrent purchase and resale. This arrangement is allowed pursuant to the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4, Chapter 5, Division 7, Title 1 (commencing with Section 6584) of the California Government Code, as amended, which provides for a reduction of issuance cost, as a competitive sale is not mandated. The Agency resolution authorizes the issuance of bonds and all related transactions, the City resolution authorizes the Agency to issue the bonds as required by Redevelopment Law, and the Joint Powers Financing Authority resolution approves the purchase and resale of the bonds by the Agency. The resolutions also establish additional cost constraints limiting the true interest cost of the refunding bonds to no more than 5.00% and the Underwriter's discount to no more than 1.50%.

The savings and new project funds generated by this financing will serve the City goal of developing affordable housing by providing project funds for projects that specifically address the affordable housing needs within Berkeley. The proposed financing will take advantage of existing market interest rates to restructure existing obligations at current historically low rates, thereby making the most efficient use of the currently pledged tax increment revenues. The proposed financing will also make use of assessed value growth within the project area to generate funds for projects now instead of waiting to receive the additional tax increment over the remaining ten years of life of the Project Area.

#### BACKGROUND

Through the budget development process, the Council has identified the development of affordable housing as one of the most important goals of the City. To enable this, the City, Agency, and Authority have an opportunity to refinance its outstanding tax allocation bonds for a measurable savings and restructure its obligations to provide additional funds. The Agency has already extended its ability to collect tax increment funding for an additional three years. Similar to the refinancing of a home to get a lower interest rate and use its equity, this bond refinancing would result in lower interest rates and a one-time lump sum of money for affordable housing projects.

#### RATIONALE FOR RECOMMENDATION

By refunding existing Tax Allocation Bonds in the current interest rate environment, the Agency will generate savings and, at the same time, bond against remaining tax increment capacity to facilitate one of the Council's stated spending priorities of developing more affordable housing.

#### ALTERNATIVE ACTIONS CONSIDERED

Excluding following the status quo, the City, Agency, and Authority could choose to attempt either the refunding of existing debt or the issuance of new debt from extra tax increment capacity as stand alone activities. Since either of these activities will result in issuance and other

one-time costs, the completion of both the refunding and bonding against remaining tax increment together can reduce the overall cost of each activity by ensuring that some costs need only be incurred once.

Other City, Agency, and Authority options are to allow the existing debt to reach maturity on the existing timeline. This approach would not take advantage of the City, Agency, and Authority's ability to leverage the debt into immediately available additional funds, but instead continue to provide a limited (less than \$100,000) amount of funding for new housing projects per year (equivalent to collecting the uncommitted tax increment on an annual basis over the remainder of the project area life). Finally, since the refunding is sensitive to interest rates, not proceeding in this environment of historically low (but now rising) interest rates, may not result in savings at a future date.

CONTACT PERSON

Iris Starr, Redevelopment Coordinator, Planning and Development Department, 981-7520.

APPROVED

**Dan Marks, Planning and Development, 981-7500**

Attachments:

- 1: Agency Resolution
- 2: Joint Powers Financing Authority Resolution
3. City Resolution

## RESOLUTION NO. \_\_\_\_

AUTHORIZING THE ISSUANCE AND PRESCRIBING THE TERMS, CONDITIONS AND FORM OF NOT TO EXCEED \$8,300,000 PRINCIPAL AMOUNT OF ITS WEST BERKELEY REDEVELOPMENT PROJECT 2005 REFUNDING TAX ALLOCATION BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE OF TRUST, A CONTINUING DISCLOSURE AGREEMENT, ESCROW AGREEMENTS AND A PURCHASE CONTRACT; AUTHORIZING AN OFFICIAL STATEMENT WITH RESPECT TO SUCH BONDS; AND AUTHORIZING AND APPROVING SUCH OTHER DOCUMENTS AND THE TAKING OF ALL NECESSARY ACTIONS

WHEREAS, the Berkeley Redevelopment Agency (the “Agency”) is a redevelopment agency, a public body, corporate and politic duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Community Redevelopment Law (Part 1 of Division 24 of the Health and Safety Code of the State of California, the “Law”) and the powers of the Agency include the power to issue bonds and notes; and

WHEREAS, a redevelopment plan for a redevelopment project known and designated as “West Berkeley Redevelopment Project,” including amendments (the “Redevelopment Plan”), has been adopted and approved, and all requirements of the law for and precedent to the adoption and approval of the Redevelopment Plan have been duly complied with; and

WHEREAS, the Redevelopment Plan contemplated that the Agency would from time to time issue its bonds and notes to finance in whole or in part the cost of certain capital projects and certain related improvements in furtherance of said Redevelopment Plan; and

WHEREAS, the Agency has previously issued its \$4,120,000 aggregate principal amount West Berkeley Redevelopment Project 1996 Tax Allocation Refunding Bonds (the “1996 Bonds”) which obligations refunded the Agency’s West Berkeley Redevelopment Project Tax Allocation Bonds, Series 1986 which were issued to finance the costs associated with redevelopment activities within the West Berkeley Redevelopment Project, and has previously issued its \$5,450,000 aggregate principal amount West Berkeley Redevelopment Project 1997 Subordinated Tax Allocation Bonds (the “1997 Bonds”, and together with the 1996 Bonds the “Refunded Bonds”) which obligations financed certain redevelopment activities of the Agency; and

WHEREAS, the Agency finds and determines that it is in its best interest to issue its West Berkeley Redevelopment Project 2005 Refunding Tax Allocation Bonds (the “Bonds”) in an aggregate principal amount not to exceed \$8,300,000 to refund the Refunded Bonds and finance redevelopment activities within or of benefit to the West Berkeley Redevelopment Project; and

WHEREAS, the Agency proposes to sell the Bonds to the Berkeley Joint Powers Financing Authority (the “Authority”) pursuant to the Marks-Roos Local Bond Pooling Act, constituting

Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California;  
and

WHEREAS, in connection with the sale of the Bonds, the Agency and the Underwriter (as appointed herein) have caused to be prepared a Preliminary Official Statement; and

WHEREAS, the Agency has on file with the City Clerk's office and has considered the following:

- (1) A form of an Indenture of Trust (the "Indenture"), by and between the Agency and The Bank of New York Trust Company, N.A. (the "Trustee") relating to the Bonds;
- (2) A form of Purchase Contract (the "Purchase Contract"), by and among the Agency, the Authority and the Underwriter to be named therein, relating to the purchase of the Bonds by the Underwriter;
- (3) Forms of the Escrow Agreements (the "Escrow Agreements") each by and between the Agency and U.S. Bank National Association, as escrow agent and trustee for the Refunded Bonds (the "Escrow Agent"); and
- (4) A form of the Preliminary Official Statement relating to the Bonds (the "Preliminary Official Statement"); and
- (5) A form of the Continuing Disclosure Certificate (the "Continuing Disclosure Certificate") relating to the Bonds.

WHEREAS, all acts, conditions and things required by the Law, and by all other laws of the State of California, to exist, to have happened and to have been performed precedent to and in connection with the issuance of the Bonds exist, have happened, and have been performed in regular and due time, form and manner as required by law, and the Agency is now duly authorized and empowered, pursuant to each and every requirement of law, to issue the Bonds for the purpose, in the manner and upon the terms herein provided.

NOW THEREFORE, BE IT RESOLVED by the Berkeley Redevelopment Agency as follows:

Declaration of Board. This Board specifically finds and declares that the actions authorized hereby constitute and are public affairs of the Agency and that the statements, findings and determinations of the Board set forth in the preambles above and in the documents approved herein are true and correct.

Approval of Indenture and Bonds; Special Obligations of the Agency. The Indenture, substantially in the form submitted to the City Clerk, is approved, and the Chairperson, Executive Officer, or the Secretary of the Agency (collectively, the "Authorized Officers"), are hereby authorized and directed to execute and deliver, for and in the name of and on behalf of the Agency, the Indenture with such additions, changes and corrections as said officers may approve upon consultation with Agency

Counsel and Bond Counsel, such approval to be conclusively evidenced by the execution and delivery of the Indenture.

The proposed form of the Bonds, as set forth in the Indenture, is hereby approved, and the Authorized Officers are hereby authorized and directed to execute the Bonds manually or by facsimile signature and the Secretary of the Agency is authorized to attest manually or by facsimile signature and to impress, imprint or reproduce on the Bonds the Agency seal, and the Trustee is hereby authorized and directed to authenticate the Bonds, in substantially such form, and to deliver the Bonds to the Underwriter (as defined below) in accordance with the Purchase Contract and the Indenture. The date, maturity date, interest rate or rates, redemption and purchase, registration privileges, manner of execution, place of payment and other terms of the Bonds shall be as provided in the Indenture as finally executed.

The Bonds and all Parity Obligations (as defined in the Indenture) shall be special obligations of the Agency secured by an irrevocable pledge of, and payable as to principal and interest from Tax Revenues (as defined in the Indenture), and other funds as provided in the Indenture. The Bonds, the interest, and any premiums payable upon the redemption or purchase, are not a debt of the City of Berkeley, the State of California or any of its political subdivisions and neither said City, said State nor any of its political subdivisions is liable on the Bonds, nor in any event shall the principal, premium or interest with respect to the Bonds be payable out of any funds or properties other than those of the Agency as set forth in the Indenture. Neither the members of the Agency nor any persons executing the Bonds are personally liable on the Bonds by reason of their execution or delivery.

Selection of Underwriter and Approval of Purchase Contract. The Authorized Officers are hereby directed to sell the Bonds to the Berkeley Joint Powers Financing Authority for concurrent resale to Pipe Jaffray & Co. (the "Underwriter") pursuant to the terms of the Purchase Contract, substantially in the form submitted to the City Clerk's office, which is approved and any of the Authorized Officers is authorized and directed, subject to the conditions of this Resolution, to execute and deliver said Purchase Contract with such changes as the person so executing it may approve, such approval to be conclusively evidenced by the execution and delivery of the Purchase Contract; provided that (i) the maximum principal amount of Bonds to be specified in the Purchase Contract shall not exceed \$8,300,000, (ii) the true interest cost of the Bonds shall not exceed 5.00%, (iii) the Underwriter's discount without giving effect to any original issue discount with respect to the Bonds shall not exceed 1.50% of the principal amount, and (iv) the Bonds shall be repaid over a period not to exceed the final expiration of the Agency's right to receive tax increment under the Redevelopment Plan. Moreover, the sale of the Bonds attributable to refunding of the Refunded Bonds shall result in net present value interest savings to the Agency.

Preliminary Official Statement and Official Statement. The Preliminary Official Statement, substantially in the form submitted to the City Clerk's office, and its use by the Underwriter in the offer and sale of the Bonds is approved and any of the Authorized Officers are hereby authorized and directed to execute and deliver a final

Official Statement in substantially the form of the Preliminary Official Statement, with such changes as the person so executing the final Official Statement may require, recommend or approve upon consultation with Agency Counsel or Bond Counsel to the Agency, such approval to be conclusively evidenced by the execution and delivery of such final Official Statement and to execute and deliver a certificate confirming that the information contained in the Preliminary Official Statement (insofar as such information relates to the Agency or the Project) is “deemed final” by the Agency for purposes of Securities and Exchange Rule 15c2-12.

Approval of Escrow Agreements. The Escrow Agreements each by and between the Agency and the Escrow Agent are hereby approved in substantially the forms submitted to the City Clerk’s office, together with such changes therein or additions thereto as the Authorized Officers may approve upon consultation with Agency Counsel and Bond Counsel, such approval to be conclusively evidenced by the execution and delivery of the Escrow Agreements.

Approval of Continuing Disclosure Certificate. The proposed form of Continuing Disclosure Certificate submitted to the City Clerk’s office is hereby approved. Any of the Authorized Officers are directed to execute and deliver the Continuing Disclosure Certificate in substantially said form, with such additions or changes as such officers may require, recommend or approve upon consultation with Agency Counsel and Bond Counsel to the Agency, such approval to be conclusively evidenced by the execution and delivery of the Continuing Disclosure Certificate.

Appointment of Bond Counsel and Financial Advisor. Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, is appointed to serve as Bond Counsel to the Agency in connection with the issuance of the Bonds. Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California is appointed to serve as disclosure counsel to the Agency in connection with the preparation of the Preliminary Official Statement and the Official Statement. Northcross, Hill & Ach is appointed to serve as financial advisor to the Agency in connection with the structuring, offer and sale of the Bonds.

Other Actions. The Agency Executive Officer and the other officers of the Agency are authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the issuance, sale and delivery of the Bonds and otherwise to effectuate the purposes of this Resolution, including without limitation, executing and delivering documents required to be delivered pursuant to the Purchase Contract and documents between the Agency and City relating to subordination of existing City rights to payment under existing Agency arrangements to the Agency’s obligations related to the Bonds and any Parity Bonds. The Executive Officer is authorized to seek a rating on the Bonds and to apply for bond insurance and to accept such rating or insurance to the extent he determines it will be beneficial to the

Agency. Such actions previously taken by such officers are ratified, confirmed and approved.

Effect. This Resolution shall take effect immediately upon its passage.

The foregoing Resolution was adopted by the Berkeley Redevelopment Agency on September 20, 2005, by the following vote:

RESOLUTION NO. \_\_\_\_

AUTHORIZING THE PURCHASE AND SALE OF BERKELEY REDEVELOPMENT AGENCY WEST BERKELEY REDEVELOPMENT PROJECT 2005 REFUNDING TAX ALLOCATION BONDS, THE EXECUTION AND DELIVERY OF A CONTRACT OF PURCHASE AND AUTHORIZING ALL OTHER ACTIONS AND NECESSARY DOCUMENTS IN CONNECTION WITH THE FOREGOING

WHEREAS, the Berkeley Joint Powers Financing Authority (the “Authority”) is authorized under the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4, Chapter 5, Division 7, Title 1 (commencing with Section 6584) of the California Government Code, as amended (the “Act”), and is authorized to purchase bonds issued by the Local Agencies (as defined in the Act) for financing and refinancing public capital improvements, working capital, liability and other insurance needs, or projects, whenever there are significant public benefits as determined by the Authority; and

WHEREAS, the Authority desires to purchase from the Redevelopment Agency of the City of Berkeley (the “Agency”) not to exceed \$8,300,000 aggregate principal amount of its West Berkeley Redevelopment Project 2005 Refunding Tax Allocation Bonds (the “Bonds”), solely from the proceeds received from the Authority’s concurrent sale of the Bonds to the Underwriter (the “Underwriter”) to be selected by the Agency; and

WHEREAS, all acts, conditions and things required by the Constitution and laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Authority is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW THEREFORE, BE IT RESOLVED by the Berkeley Joint Powers Financing Authority as follows:

RECITALS TRUE AND CORRECT. The foregoing recitals are true and correct and this Authority so finds and determines.

PURCHASE AND SALE OF BONDS. The proposed form of bond purchase contract (the “Purchase Contract”), by and among the Agency, the Authority and Piper Jaffray & Co. (the “Underwriter”) on file with the Secretary of the Authority is approved. The President, the Chief Administrative Officer or the Secretary of the Authority (the “Officers of the Authority”) is authorized and directed, for and in the name and on behalf of the Authority, to purchase the Bonds from the Agency and to accept the offer of the Underwriter with such additions thereto or changes therein as recommended or approved by such officers to purchase the Bonds from the Authority,

subject to the terms and conditions of the Purchase Contract, and to execute and deliver the Purchase Contract to the Agency and the Underwriter, provided, however, that (i) the aggregate principal amount of Bonds shall not exceed \$8,300,000, (ii) the true interest cost payable with respect to the Bonds shall not exceed 5.00% per annum, (iii) the Underwriter's discount shall be not greater than 1.50% of the par amount thereof, excluding any original issue discount on the Bonds and (iv) the Bonds shall be repaid over a period not to exceed the final expiration of the Agency's right to receive tax increment under the Redevelopment Plan. The approval of any additions or changes in such form shall be conclusively evidenced by such execution and delivery of the Purchase Contract.

**ALL ACTIONS NECESSARY.** The Officers of the Authority, and its General Counsel, are authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable in order to consummate the issuance, sale and delivery of the Bonds and otherwise to effectuate the purposes of this Resolution, the Purchase Contract and the transactions contemplated hereby and thereby.

**RATIFICATION.** All of the actions heretofore taken by the Officers of the Authority in furtherance of the planning, negotiation, authorization, approval or implementation of the financing contemplated are ratified, confirmed and approved in all respects.

**EFFECTIVE DATE.** This Resolution shall take effect immediately upon its passage and remain in full force and effect thereafter.

The foregoing Resolution was adopted by the Berkeley Joint Powers Financing Authority on September 20, 2005, by the following vote:

RESOLUTION NO. -N.S.

APPROVING THE ISSUANCE OF WEST BERKELEY REDEVELOPMENT PROJECT 2005 REFUNDING TAX ALLOCATION BONDS BY THE CITY OF BERKELEY REDEVELOPMENT AGENCY IN AN AMOUNT NOT TO EXCEED \$8,300,000, TO REFUND OUTSTANDING PRIOR AGENCY BONDS AND GENERATE ADDITIONAL PROJECT FUNDING

WHEREAS, the City of Berkeley (the “City”) is a municipal corporation and charter city organized and existing under the land of the State of California; and

WHEREAS, the Berkeley Redevelopment Agency (the “Agency”) is authorized under the Community Redevelopment Law, constituting Part 1, Division 24 (commencing with Section 33000) of the Health and Safety Code of the State of California, as amended (the “Redevelopment Law”), to issue and sell bonds for any of its corporate purposes; and

WHEREAS, a redevelopment plan for a redevelopment project known and designated as the “West Berkeley Redevelopment Project” including amendments thereto (the “Redevelopment Plan”) has heretofore been adopted and approved, and all requirements of law for the adoption and approval of the Redevelopment Plan have been duly complied with; and

WHEREAS, the Redevelopment Plan contemplated that the Agency would from time to time issue its bonds and notes to finance in whole or in part the cost of certain capital projects and certain related improvements in furtherance of said Redevelopment Plan; and

WHEREAS, the Agency has previously issued its \$4,120,000 aggregate principal amount West Berkeley Redevelopment Project 1996 Tax Allocation Refunding Bonds (the “1996 Bonds”) which obligations refunded the Agency’s West Berkeley Redevelopment Project Tax Allocation Bonds, Series 1986 which were issued to finance the costs associated with redevelopment activities within the West Berkeley Redevelopment Project and has previously issued its \$5,450,000 aggregate principal amount West Berkeley Redevelopment Project 1997 Subordinated Tax Allocation Bonds (the “1997 Bonds”, and together with the 1996 Bonds the “Refunded Bonds”) which obligations financed certain redevelopment activities of the Agency; and

WHEREAS, the Agency desires to issue, sell and deliver its Berkeley Redevelopment Agency West Berkeley Redevelopment Project 2005 Refunding Tax Allocation Bonds (the “Bonds”) in the aggregate principal amount not to exceed \$8,300,000, to obtain moneys to finance redevelopment activities with or of benefit to the West Berkeley Redevelopment Project and to refund the Refunded Bonds all under and in accordance with the Constitution and laws of the State of California, including the Redevelopment Law; and

WHEREAS, Section 33640 of the Redevelopment Law requires the Agency to obtain approval of the City Council of the City prior to the issuance of bonds.

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

SECTION 1. Pursuant to said Section 33640 of the Redevelopment Law, the City Council approves the issuance of bonds by the Agency in the aggregate principal amount not to exceed \$8,300,000 designated “Berkeley Redevelopment Agency West Berkeley Redevelopment Project 2005 Refunding Tax Allocation Bonds.”

SECTION 2. The Manager, and any and all other officers of the City, are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, 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 and sale of the Bonds by the Agency, as described herein and the refinancing of the Refunded Bonds and any undertakings with any taxing entities related thereto, in accordance with the Agency resolution providing for the issuance of the Bonds. Without limiting the generality of the foregoing, the Manager is authorized to evidence the subordination of the City’s right to receive tax increment under Section 33607.5 or 33607.7 of the Redevelopment Law to the Bonds and the subordination of any payments to be made by the Agency to the City of loan, bond or other amounts owing to the City by the Agency to the Agency’s obligations with respect to the Bonds and any Parity Bonds to the extent determined necessary or appropriate by the Manager fore the marketing of the Bonds on the advice of the City Attorney and the Agency’s Financial Advisor.

SECTION 3. This Resolution shall take effect immediately upon adoption.