

CITY OF BAINBRIDGE ISLAND, WASHINGTON

RESOLUTION NO. 2009-08

A RESOLUTION of the City of Bainbridge Island, Washington, approving the sale of not to exceed \$6,000,000 aggregate principal amount Sewer Revenue Bond Anticipation Note (Line of Credit), 2009, to Cashmere Valley Bank, fixing the interest rate, maturity date, and other terms of the Note; and providing for other matters properly relating thereto.

ADOPTED: April 22, 2009

This document prepared by:

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, as follows:

Section 1. Findings and Determinations. The City Council hereby makes the findings and determinations set forth in this Section 1. Capitalized terms are defined in Ordinance No. 2009-02 of the City, passed on March 11, 2009, as amended by Ordinance No. 2009-07 of the City, passed on April 22, 2009 (the "Bond Ordinance") and in Section 2 of this resolution.

(a) Pursuant to the Bond Ordinance, the City has authorized the issuance of the Note, as a short-term obligation issued in anticipation of permanent financing, in an amount not to exceed \$6,000,000 for the purpose of carrying out the Plan of Additions set forth therein.

(b) Cashmere Valley Bank has offered to provide interim financing through the purchase of a short-term bond anticipation note, as authorized by chapter 39.50 RCW, under the terms and conditions set forth in the form of a Proposal Letter, which is on file with the City Finance Director.

(c) Based on the foregoing, the City finds that it is in the best interest of the City and its ratepayers to accept the Proposal Letter and to issue and sell its Not to Exceed \$6,000,000 Sewer Revenue Bond Anticipation Note (Line of Credit), 2009, pending permanent financing.

Section 2. Definitions. The definitions provided in the Bond Ordinance are incorporated by this reference. In addition, as used in this resolution, the following words shall have the following meanings:

"Bank" means Cashmere Valley Bank of Cashmere, Washington.

"Bond Legislation" means, with respect to the Note, this Bond Sale Resolution and the Bond Ordinance.

“Bond Ordinance” means Ordinance No. 2009-02 of the City, passed on March 11, 2009, as amended by Ordinance No. 2009-07, passed on April 22, 2009.

“Bond Sale Resolution” means this resolution of the City Council approving and fixing the par amount, date, form, maturities, interest rates, terms and covenants of the Note and approving its issuance and sale to the Purchaser.

“Bonds” means, for purposes of this resolution, the Project Bonds authorized to be issued pursuant to, under the authority of and for the purposes provided in the Bond Ordinance.

“Business Day” means any day which is not a Saturday or Sunday or a day on which commercial banks located in Seattle, Washington, are closed for business.

“Draw” means each incremental draw upon the Note.

“Interest Payment Date” means each June 1 and December 1, commencing June 1, 2009.

“Maturity Date” means December 1, 2011.

“Note” means, for purposes of this resolution, the Sewer Revenue Bond Anticipation Note (Line of Credit), 2009 of the City in a principal amount not to exceed \$6,000,000, which is authorized by the Bond Legislation.

“Note Debt Service Fund” means that special fund of the City within the Sewer Fund, designated as the Sewer Revenue Bond Anticipation Note Debt Service Fund, 2009, established for the purpose of paying principal of and interest on the Note.

“Note Register” means the books or records maintained by the Note Registrar containing the name and mailing address of the owner of the Note.

“Note Registrar” means the Finance Director.

“Prime Rate” means the rate of interest publicly announced from time to time as the Wall Street Journal Prime Rate.

“Project Fund” means the special fund of the City created and established by this ordinance to pay costs of the Project.

“Proposal Letter” means the letter of the Bank dated April 10, 2009, describing certain terms of the line of credit to be evidenced by the Note.

“Sewer Fund” means the fund of that name previously established within the City’s Waterworks Utility Fund.

“Sewer System Obligations” means Revenue Obligations payable solely from and secured by a pledge of the Sewer System Revenues. Sewer System Obligations are not general obligations of the City and do not include any portion of any obligation secured by a general obligation pledge.

“Sewer System Revenues” means Waterworks Utility Revenue allocable solely to the Sewer System and remaining after payment of the Maintenance and Operation Expense allocable to the Sewer System within the Waterworks Utility. Sewer System Revenues shall be available to pay, in the following order: (a) Maintenance and Operation Expenses of the Sewer System of the Waterworks Utility; (b) the principal of and interest on all outstanding Sewer System Obligations, if any, for which payment has not otherwise been provided and all amounts that the City is obligated to set aside into a debt service fund and any reserve fund securing such Sewer System Obligations, and all other payment obligations related thereto; (c) payment of the principal of and interest on (in the following order): (i) that portion of any outstanding Revenue Obligations allocated to the Sewer System, (ii) that portion of any Subordinate Obligations allocated to the Sewer System, and (iii) all amounts that the City is obligated to set aside in the Debt Service Fund or reserve fund for such bonds; and (d) for the payment of any and all other amounts allocable to the Sewer System that the City is obligated to pay from Net Revenue of the Waterworks Utility, including without limitation any Public Works Trust Fund Loans.

Section 3. Description of the Note. For the purpose of providing the funds with which to pay costs of the Project, the costs of issuing and delivering the Note, and interest on the Note pending the issuance of the Bonds, the City may borrow money from time to time pursuant to a line of credit extended by the Bank under the terms of its Proposal Letter, and consistent with the provisions of this ordinance, and shall issue the Note in a maximum principal amount not to exceed \$6,000,000. The Note shall be prepared in a form consistent with this resolution and the Bond Ordinance and shall be designated a Sewer System Obligation for purposes of the Bond Ordinance.

The Note shall be designated the Sewer Revenue Bond Anticipation Note, 2009 (Line of Credit) and it shall be dated as of its date of delivery to the Bank. The Note shall be issued in fully registered form and shall be numbered R-1. Each Draw on the Note shall bear interest at a variable rate equal to 90% of the Prime Rate on the date of such Draw, calculated on an actual/365 day basis. The City Council finds that this method of determining the interest rate is in the best interest of the City and its taxpayers and ratepayers. Principal of and interest on the Note shall be payable as described in Section 5, below. Draws are not subject to approval by the Bank, but shall be limited to the aggregate principal amount of \$6,000,000. The line of credit evidenced by the Note is a nonrevolving line of credit, and amounts repaid may not be reborrowed.

If the Note is not redeemed when properly presented at its Maturity Date, the City shall be obligated to pay interest on the Note, solely from the funds set aside and pledged for such purpose, at the same rate provided from and after its maturity until the Note, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the note redemption fund and the Note has been called for payment by giving notice of that call to the registered owner.

Section 4. Note Registrar; Registration and Transfer of the Note. The Finance Director is appointed Note Registrar for the Note. The Note shall be issued to the Bank only in registered form as to both principal and interest and recorded on the Note Register. The Note Register shall contain the name and mailing address of the owner of the Note. The Note may be assigned or transferred only in whole by the registered owner to a single investor that is a

financial institution or a person who is reasonably believed to be a qualified institutional buyer or accredited investor within the meaning of the applicable federal securities laws. Any transfer shall be without cost to the owner or transferee, except for governmental charges imposed on any such transfer or exchange. The Note Registrar shall not be obligated to exchange or transfer any Note during the 15 days preceding any interest payment or prepayment date. When the Note has been paid in full, both principal and interest, the Note shall be surrendered by the registered owner to the Note Registrar, who shall cancel the Note.

Section 5. Note Debt Service Fund; Payment of Note. The Note Debt Service Fund is established in the office of the Finance Director as a special fund within the Sewer Fund for the purpose of paying principal of and interest on the Note. All rates and charges collected for and allocated to the payment of the principal of and interest on the Note shall be deposited in the Note Debt Service Fund.

Both principal of and interest on the Note shall be payable in lawful money of the United States of America solely out of the Note Debt Service Fund from the proceeds of Project Bonds authorized by the Bond Ordinance to be deposited in such fund, other short-term obligations or from other money legally available and to be used therefor, and the City irrevocably pledges to redeem the Note on its Maturity Date from the proceeds of those bonds or other money available for that purpose. This pledge shall constitute a lien and charge upon such Sewer System Revenues prior and superior to any other liens and charges whatsoever, subject only to Maintenance and Operation Expense allocable to the Sewer System. The Note shall be payable only from the Note Debt Service Fund as provided herein and shall not be a general obligation of the City, the State of Washington or any political subdivision thereof.

Section 6. Draws; Deposit of Proceeds. The City Council finds it to be in the best interest of the City that the Finance Director, or such other person as that officer may designate, be authorized to make Draws against the Note in the amounts and at the times as he may determine are required to finance the costs of the Project, those Draws to be made in accordance with the terms and provisions set forth in this resolution and the Bond Ordinance.

The City may make Draws upon the Note in any amount on any Business Day during the term of the Note to carry out the purposes of the Note. No Draw may exceed the total amount of the costs to be paid from such Draw, and the proceeds of each Draw shall be used immediately to pay those costs. Draws shall be made by written request to the Bank, which request may be made by facsimile. Draws shall be recorded on the Loan Draw Record attached to the Note, or in such other form as the City and the Bank may agree.

Proceeds of any Draws shall be paid into the Project Fund hereby created and established in the office of the Finance Director. The City shall pay all costs and expenses, including the Bank's attorney fees (if any), and any other costs of the Bank in the form of a Draw or as the Bank and the City may mutually agree.

Section 7. Pledge; Covenants. The City irrevocably pledges to redeem the Note from the proceeds of a sufficient amount of Bonds or additional short-term obligations, and the Sewer System Revenues are pledged for the payment of the Note in accordance with the flow of funds set forth in Section 11 of Ordinance No. 2009-02 (as amended by Section 4(d) of Ordinance No.

2009-07). This pledge shall constitute a lien and charge upon such Sewer System Revenues prior and superior to any other liens and charges whatsoever, subject only to Maintenance and Operation Expense of the Sewer System. The Bonds shall be obligations only of the Note Debt Service Fund and shall be payable and secured as provided herein. The Note is not a general obligation of the City.

For as long as the Note remains outstanding, the City covenants with the Bank as follows:

(a) The City will provide to the Bank annual financial statements reviewed by the Washington State Auditor's Office within 10 business days after their issue date.

(b) The City will establish, maintain and collect such rates and charges for sanitary sewage disposal service which, together with other miscellaneous revenue of the Sewer System (excluding ULID assessments), will provide sufficient amounts annually to provide for Maintenance and Operation Expense of the Sewer System, and for debt service on all outstanding obligations having a lien and charge on the Sewer System Revenues, including but not limited to debt service on the Note.

Section 8. Prepayment and Redemption Provisions. The City reserves the right and option to prepay and redeem at any time all or a portion of the principal amount of the Note then outstanding at par plus accrued interest to the date of prepayment and redemption. Interest on the Note or the portion thereof so prepaid shall cease to accrue on the date of such prepayment. There shall be no fee for prepayment and no advance notice shall be required.

Section 9. Acceptance of Proposal Letter. The Bank has submitted a proposal to accept delivery of the Note under the terms and conditions of its Proposal Letter on file with the Finance Director and incorporated herein by this reference. The City Council finds that accepting the offer contained in the Proposal Letter is in the City's best interest and therefore accepts such offer and authorizes and directs the Mayor to execute the Proposal Letter and such other documents as may be necessary for the issuance, sale and delivery of the Note to the Bank. The Note will be prepared at City expense and will be delivered to the Bank in accordance with the Proposal Letter, with the approving legal opinion of Foster Pepper PLLC, municipal bond counsel of Seattle, Washington, regarding the Note. The Bank shall be paid the loan fees set forth in the Proposal Letter. The proper City officials are authorized and directed to do everything necessary for the prompt delivery of the Note to the Bank and for the proper application and use of the Draws thereon.

Section 10. Designation of Note as "Qualified Tax-Exempt Obligation". The City has determined and certifies that (a) the Note is not a "private activity bond" within the meaning of Section 141 of the Code; (b) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) which the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during the calendar year in which the Note is issued will not exceed \$30,000,000; and (c) the amount of tax-exempt obligations, including the Note, designated by the City as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Note is issued does not exceed

\$30,000,000. The City designates the Note as a "qualified tax-exempt obligation" for the purposes of Section 265(b)(3) of the Code.

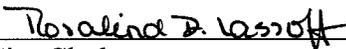
Section 11. Effective Date; Contract; Severability. This resolution shall take effect immediately upon the effective date of Ordinance No. 2009-07. The covenants contained in this resolution and the Ordinance shall constitute a contract between the City and the Registered Owner of the Note. If any one or more of the covenants or agreements to be performed on the part of the City shall be declared by any court of competent jurisdiction and final appeal (if any appeal be taken) to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Note.

ADOPTED by the City Council of the City of Bainbridge Island, Washington, and signed by me in open session in authentication of its adoption at a regular meeting thereof held this 22nd day of April, 2009.



Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:



Foster Pepper PLLC, Bond Counsel

CERTIFICATION

I, the undersigned, City Clerk of the City of Bainbridge Island, Washington (the "City"), hereby certify as follows:

1. The attached copy of Resolution No. 2009-08 (the "Resolution") is a full, true and correct copy of a Resolution duly adopted at a regular meeting of the City Council of the City held at the regular meeting place thereof on April 22, 2009, as that Resolution appears on the minute book of the City; and the Resolution is in full force and effect from and after its date of adoption; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the adoption of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of April, 2009.

CITY OF BAINBRIDGE ISLAND,
WASHINGTON



City Clerk