

## RESOLUTION NO. 06-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATING TO THE SALE AND DELIVERY OF NOT TO EXCEED \$30,000,000 CITY OF COSTA MESA 2007 CERTIFICATES OF PARTICIPATION (POLICE FACILITY EXPANSION PROJECT), AND AUTHORIZING CERTAIN DOCUMENTS AND DIRECTING CERTAIN ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Costa Mesa (the "City") is a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California (the "State"); and

WHEREAS, in 2003, the Costa Mesa Public Financing Authority (the "Authority") and the City caused the defeasance and refinancing of the Authority's \$18,970,000 Refunding Revenue Bonds, 1993 Series A (Public Facilities Project) (the "1993 Bonds") through the sale and execution and delivery of the City of Costa Mesa Refunding Certificates of Participation (Public Facilities Project), Series 2003 (the "2003 Certificates"); and

WHEREAS, in connection with the execution and delivery of the 2003 Certificates, the City and the Authority entered into a Site Lease by and between the City and the Authority, dated as of October 1, 2003 (the "Original Site Lease") and a Lease/Purchase Agreement by and between the City and the Authority, dated as of October 1, 2003 (the "Original Lease"), pursuant to which the City leased certain property described in the Original Site Lease (the "Property") to the Authority and leased the Property back from the Authority under the Original Lease and agreed to pay Lease Payments (as defined in the Original Lease), which have been pledged to the owners of the 2003 Certificates by the Authority pursuant to a Trust Agreement by and among The Bank of New York Trust Company, N.A., as successor-in-interest to BNY Western Trust Company, as trustee (the "Trustee"), the City and the Authority, dated as of October 1, 2003 (the "Original Trust Agreement") and the Assignment Agreement, dated as of October 1, 2003 (the "Original Assignment Agreement"), by and between the Authority and the Trustee; and

WHEREAS, the Original Trust Agreement allows for the execution and delivery of Additional Certificates (as that term is defined in the Original Trust Agreement) to finance additional improvements for the City, subject to the consent of the bond insurer ("Bond Insurer") for the 2003 Certificates, among other things; and

WHEREAS, the City desires to cause the Trustee to execute and deliver the City of Costa Mesa 2007 Certificates of Participation (Police Facility Expansion Project), in the aggregate principal amount not to exceed \$30,000,000 (the "2007 Certificates"), in

order to provide additional financing for the acquisition, construction, reconstruction, modernization and equipping of the City's Police Department facility (the "2007 Project"); and

WHEREAS, to accomplish the sale, preparation, execution and delivery of the 2007 Certificates, the City desires to enter into that certain First Amendment to Site Lease, dated as of January 1, 2007 (the "First Amendment to Site Lease," and, together with the Original Site Lease, the "Site Lease"), by and between the City and the Authority and that certain First Amendment to Lease/Purchase Agreement, dated as of January 1, 2007 (the "First Amendment to Lease/Purchase Agreement," and, together with the Original Lease, the "Lease"), by and between the City and the Authority; and

WHEREAS, to facilitate the execution and delivery of the 2007 Certificates the City desires to enter into that certain Amended and Restated Trust Agreement, dated as of January 1, 2007 (the "Amended and Restated Trust Agreement"), by and among the Authority, the City and the Trustee and that certain First Amendment to Assignment Agreement, dated as of January 1, 2007 (the "First Amendment to Assignment Agreement," and, together with the Original Assignment Agreement, the "Assignment Agreement"), by and between the Authority and the Trustee; and

WHEREAS, to facilitate the acquisition, construction, reconstruction, modernization and equipping of the 2007 Project, the City will act as agent of the Authority for the purposes of the acquisition, construction, reconstruction, modernization and equipping of the 2007 Project pursuant to an Agency Agreement, dated as of January 1, 2007 (the "Agency Agreement"), by and between the Authority and the City; and

WHEREAS, the City Council of the City has held a public hearing on the date hereof pursuant to Government Code Section 6586.5 following publication of notice not less than 5 days prior to the hearing, concerning the financing of the 2007 Project and the execution and delivery of the 2007 Certificates; and

WHEREAS, the City wishes to provide for the competitive sale of the Certificates pursuant to an Official Notice of Sale; and

WHEREAS, the forms of the documents necessary to finance the 2007 Project and provide for the execution and delivery of the 2007 Certificates are on file with the City Clerk as described herein; and

WHEREAS, prior to the issuance of the 2007 Certificates the City has and will incur certain expenditures with respect to the 2007 Project from available monies of the City which expenditures are desired to be reimbursed by the City from a portion of the proceeds of the sale of the 2007 Certificates;

WHEREAS, all acts, conditions and things required by the Constitution and laws of the State to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as

required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, it is resolved by the City Council of the City of Costa Mesa as follows:

SECTION 1. Findings. The City Council hereby specifically finds and declares that each of the statements, findings and determinations of the City set forth in the recitals set forth above and in the preambles of the documents approved herein are true and correct and that the financing of the 2007 Project will result in significant public benefits for the residents of the City of the type described in Government Code Section 6586 (a), (c) and (d). The City Council hereby further finds and determines that the total rental to be paid under the Lease, including with respect to any bond insurer payments, does not exceed the fair rental value of the Property as set forth in the Lease.

SECTION 2. Authorization of 2007 Certificates. The City Council hereby authorizes the financing all or a portion of the acquisition, construction, reconstruction, modernization and equipping of the 2007 Project through the preparation, sale and delivery of the 2007 Certificates in an amount not to exceed \$30,000,000.

SECTION 3. First Amendment to Lease/Purchase Agreement. The form of the First Amendment to Lease/Purchase Agreement presented to this meeting and on file with the City Clerk (the "Clerk"), is hereby approved. Each of the Mayor of the City (the "Mayor"), the City Manager of the City (the "City Manager") and the Director of Finance of the City (the "Director of Finance") or their designees (collectively, the "Authorized Officers"), is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority the First Amendment to Lease/Purchase Agreement in substantially said form, with such changes therein as such officer or person or persons may require or approve (including pursuant to Section 15 hereof), such approval to be conclusively evidenced by the execution and delivery thereof by one or more of such officers.

SECTION 4. First Amendment to Site Lease. The form of the First Amendment to Site Lease presented to this meeting and on file with the City Clerk, is hereby approved. Each of the Authorized Officers is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority the First Amendment to Site Lease in substantially said form, with such changes therein as such officer or person or persons may require or approve (including pursuant to Section 15 hereof), such approval to be conclusively evidenced by the execution and delivery thereof by one or more of such officers.

SECTION 5. Amended and Restated Trust Agreement. The form of the Amended and Restated Trust Agreement presented to this meeting and on file with the Clerk, is hereby approved. Each of the Authorized Officers is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority and the Trustee the Amended and Restated Trust Agreement in substantially

said form, with such changes therein as the Authorized Officer or Officers executing the Amended and Restated Trust Agreement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof by one or more of the Authorized Officers.

SECTION 6. Appointment of Trustee. The Bank of New York Trust Company, N.A. shall continue to act as trustee (the "Trustee") under the Amended and Restated Trust Agreement unless and until replaced in accordance with the provisions of the Amended and Restated Trust Agreement.

SECTION 7. First Amendment to Assignment Agreement. The First Amendment to Assignment Agreement substantially in the form on file with the Clerk is hereby approved for execution and delivery by the Authority. Each of the Authorized Officers is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority and the Trustee the Amended and Restated Assignment Agreement in substantially said form, with such changes therein as the Authorized Officer or Officers executing the Amended and Restated Assignment Agreement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof by one or more of the Authorized Officers.

SECTION 8. Official Notice of Sale. The form of the Official Notice of Sale on file with the Clerk is approved and the City's Financial Advisor is authorized to solicit bids for the sale of the 2007 Certificates by publishing once in *The Bond Buyer*, not less than 5 days prior to receipt of bids, a short form of the Official Notice of Sale and to distribute or make available to prospective purchasers of the 2007 Certificates the Official Notice of Sale substantially in the form on file with the Clerk together with such changes thereto as the Director of Finance or his designee, approve. The Director of Finance and his designee are authorized, on behalf of the City, to accept the bid of the lowest responsible bidder for the 2007 Certificates provided that (a) the principal amount of the 2007 Certificates does not exceed \$30,000,000 and (b) the true interest cost of the 2007 Certificates as calculated by the City's Financial Advisor does not exceed 6.0%. The sale may be conducted through electronic means if the Director of Finance, or his designee, determines that such process will assist the City in obtaining the lowest interest cost for the 2007 Certificates.

SECTION 9. Bond Insurance. The City Manager and his designee are hereby authorized to (i) solicit bids on a municipal bond insurance policy and/or surety for reserve, (ii) to negotiate the terms of such policy or policies, (iii) to finalize, if appropriate, the form of such policy or policies with a municipal bond insurer and (iv) if it is determined that the policy or policies will result in net savings for the City, to pay the insurance premium of such policy from the proceeds of the issuance and sale of the 2007 Certificates.

SECTION 10. Preliminary Official Statement. The form of the Preliminary Official Statement, presented to this meeting and on file with the Clerk, is hereby approved. The Director of Finance and his designee are hereby authorized to make such changes to the Preliminary Official Statement as are necessary to make it final as

of its date and are authorized and directed to execute and deliver a certificate deeming the Preliminary Official Statement final as of its date in accordance with Rule 15c2-12 promulgated under the Securities Exchange Act of 1934. The Authorized Officers are hereby authorized and directed to execute, approve and deliver the final Official Statement in the form of the Preliminary Official Statement with such changes, insertions and omissions as the Authorized Officers executing said document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 11. Continuing Disclosure Certificate. The form of the Continuing Disclosure Certificate to be executed and delivered by the City (the "Continuing Disclosure Certificate"), presented to this meeting and on file with the Clerk, is hereby approved. Each of the Authorized Officers is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Continuing Disclosure Certificate in substantially said form, with such changes therein as such Authorized Officers executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 12. Agency Agreement. The form of the Agency Agreement presented to this meeting and on file with the Clerk, is hereby approved. Each of the Authorized Officers is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority the Agency Agreement in substantially said form, with such changes therein as the Authorized Officer or Officers executing the Agency Agreement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof by one or more of the Authorized Officers.

SECTION 13. Attestations. The Clerk or persons as may have been designated by the City Manager are hereby authorized and directed to attest the signature of the Authorized Officers designated herein to execute any documents described herein, and to affix and attest the seal of the City, as may be required or appropriate in connection with the execution and delivery of the First Amendment to Lease/Purchase Agreement, the Amended and Restated Trust Agreement, the Continuing Disclosure Certificate, the First Amendment to Site Lease, the Agency Agreement, the Official Notice of Sale and the Official Statement.

SECTION 14. Expected Reimbursement. The City hereby states its intention and reasonably expects to reimburse 2007 Project costs incurred prior to the issuance of the 2007 Certificates with proceeds of the 2007 Certificates. The reasonably expected maximum principal amount of the 2007 Certificates is \$30,000,000. This resolution is being adopted not later than 60 days after the payment of the original expenditures (the "Expenditures Date or Dates"). Except as described below, the expected date of issue of the 2007 Certificates will be within eighteen months of the later of the Expenditure Date or Dates and the date the 2007 Project is placed in service; provided, the reimbursement may not be made more than three years after the Expenditure Date.

Proceeds of the 2007 Certificates to be used to reimburse for 2007 Project costs are not expected to be used within one year of reimbursement, directly or indirectly, to pay debt service with respect to any obligation (other than to pay current debt service coming due within the next succeeding one year period on any tax-exempt obligation of the City (other than the 2007 Certificates)) or to be held as a reasonably required reserve or replacement fund with respect to an obligation of the City or any entity related in any manner to the City, or to reimburse any expenditure that was originally paid with the proceeds of any obligation, or to replace funds that are or will be used in such manner.

This Resolution is consistent with the budgetary and financial circumstances of the City, as of the date hereof. No monies from sources other than the proceeds of the 2007 Certificates are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside by the City (or any related party) pursuant to their budget or financial policies with respect to the 2007 Project costs. To the best of its knowledge, this City Council is not aware of the previous adoption of official intents by the City that have been made as a matter of course for the purpose of reimbursing expenditures and for which tax-exempt obligations have not been issued.

The limitations described above regarding the Expenditures Dates do not apply to (a) costs of issuance of the 2007 Certificates, (b) an amount not in excess of the lesser of \$100,000 or five percent (5%) of the proceeds of the 2007 Certificates, or (c) any preliminary expenditures, such as architectural, engineering, surveying, soil testing, and similar costs other than land acquisition, site preparation, and similar costs incident to commencement of construction, not in excess of twenty percent (20%) of the aggregate issue price of the 2007 Certificates that finances the 2007 Project for which the preliminary expenditures were incurred.

This Resolution is adopted as official action of the City in order to comply with Treasury Regulation §1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for reimbursement of City expenditures incurred prior to the date of issue of the 2007 Certificates, is part of the City's official proceedings, and will be available for inspection by the general public at the main administrative office of the City.

SECTION 15. Other Actions. The Authorized Officers are each hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which each may deem necessary or advisable (including the payment of a premium for a municipal bond insurance policy, or other form of credit enhancement or a subordination agreement or amendment to any existing management, license or lease agreement pertaining to any portion of the 2007 Project) in order to consummate the sale, execution and delivery of the 2007 Certificates and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the 2007 Certificates, the First Amendment to Lease/Purchase Agreement, the Amended and Restated Trust Agreement, the Continuing Disclosure Certificate, the First Amendment to Site Lease, the Agency Agreement, the Official Notice of Sale, the Preliminary Official Statement, and the Official Statement. Such actions heretofore

taken by such officers or designees are hereby ratified, confirmed and approved. In the event that it is determined by the City Manager, or his designee, that there are limitations or restrictions on the ability of the City to lease any portion of the 2007 Project as contemplated by the Site Lease and the Lease, or the extent required by the Bond Insurer as a condition of its consent to additional Certificates or as a condition of securing bond insurance for the 2007 Certificates, the City Manager, or his designee, may designate other or additional real property of the City to be leased pursuant to the Site Lease and the Lease, to be selected from among existing unencumbered public safety or park facilities with such designation to be conclusively evidenced by the execution and delivery of the Site Lease and the Lease by one or more of the Authorized Officers.

SECTION 16. Effect. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this 5<sup>th</sup> day of December, 2006.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Julie Folcik, City Clerk

\_\_\_\_\_  
Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF COSTA MESA )

I, JULIE FOLCIK, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that foregoing is the original of Resolution No. 06-\_\_\_\_\_ and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 5<sup>th</sup> day of December, 2006, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 6<sup>th</sup> day of December, 2006.

\_\_\_\_\_  
JULIE FOLCIK, CITY CLERK

(SEAL)