RESOLUTION NO. 09-15

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK APPROVING INFRASTRUCTURE STATE REVOLVING FUND PROGRAM FINANCING NOT TO EXCEED $10,000,000 FOR CITY OF DAVIS

WHEREAS, the City of Davis ("Applicant") has submitted an application ("Application") requesting $10,000,000 Infrastructure State Revolving Fund ("ISRF") Program financing for the East Area Water Storage Tank Capital Improvement Project (CIP8172) (the "Project"); and

WHEREAS, the Project meets all eligibility requirements contained in Government Code Section 63000 *et seq.* ("Act") and the Criteria, Priorities and Guidelines ("Criteria") for the ISRF Program; and

WHEREAS, pursuant to Federal tax law, any funds made to the Applicant by the I-Bank for the purpose of financing costs associated with the Project on a long-term basis using proceeds of tax-exempt bonds previously issued by the I-Bank may reimburse the Applicant for certain expenditures paid by the Applicant in connection with the Project (the "Reimbursable Expenditures") prior to the execution of any financing agreement between the I-Bank and the Applicant.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank ("Board"), as follows:

Section 1. Based upon information presented at the meeting where adoption of this resolution was presented and the staff report presented to the Board, the Board makes the following findings:

(a) Applicant meets the definition of "sponsor" pursuant to Government Code Section 63010 (u) and is thus an eligible recipient of financing;

(b) The Project meets the definition of "public development facility" pursuant to Government Code Section 63010(q) and is thus an eligible project to be financed;

(c) The categories of Project costs proposed to be paid with ISRF Program funds meet the definition of "Costs" pursuant to Government Code Section 63010(f) and thus are eligible for ISRF Program financing;

(d) Applicant adopted a resolution consistent with the requirements of Government Code Section 63041;

(e) Applicant meets the "need for I-Bank financing" and "readiness to proceed" criteria contained in the Criteria;

(f) Applicant and Project are eligible for tax-exempt financing under Federal law, without an allocation of private activity bond volume cap as required in the Criteria;

(g) The Project will not result in a "business relocation" as defined in the Criteria;

(h) The proposed financing complies with the underwriting criteria and sources of loan repayment specified in the Criteria; and

(i) The proposed Project is financially feasible, with all Project funding sources identified and committed.

Section 2. The Board hereby approves the lending of ISRF Program funds to the Applicant, subject to the execution of a financing agreement between the I-Bank and the Applicant pursuant to the terms and conditions specified in Attachment A to this resolution, and provided that the reimbursable costs are consistent with Resolution 09-06 approved by this Board on February 24, 2009.

Section 3. The Chair or the Executive Director and the Secretary, each acting alone, is authorized to execute all documents, certificates and other written agreements reasonably necessary to effectuate the financing of the Project authorized by this resolution. The authority to execute financing documents shall expire automatically two hundred and ten (210) days from the adoption of this resolution.

Section 4. This resolution and the Board's approval do not constitute an unconditional commitment to finance the Project, but instead sets forth conditions that shall be met prior to the execution of any financing agreement between the I-Bank and the Applicant, and the terms and conditions that shall be contained in any such agreement. The financing agreement shall also include those conditions and agreements on the part of the Applicant that, in the best judgment of the Chair or the Executive Director, as the party signing such agreements on behalf of the I-Bank, are necessary or reasonable to adequately protect the interests of the I-Bank. Attachment A sets forth minimum terms and conditions to the execution of any such agreement and does not contain conditions of sufficient specificity to constitute a commitment to finance.

Section 5. The Board hereby declares its reasonable official intent to use proceeds of tax-exempt bonds to reimburse the Applicant for the Reimbursable Expenditures as authorized by this resolution.

Section 6. This resolution shall take effect from and after its adoption.

PASSED, APPROVED, AND ADOPTED at a meeting of the Board of Directors of the California Infrastructure and Economic Development Bank on April 29, 2009 by the following vote:

AYES: BONNER, SHEEHY, LUJANO, AGUIAR, RICE

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

By: _____
Stanton C. Hazelroth, Executive Director

ATTEST

By: _____
Roma Cristia-Plant, Secretary

ATTACHMENT A

1. **Applicant:** City of Davis.
2. **Project:** East Area Water Storage Tank Capital Improvement Project (CIP8172).
3. **Amount of Financing:** Not to exceed $10,000,000.
4. **Maturity:** Not to exceed 30 years.
5. **Funding Availability:** I-Bank's financing commitment is subject to the availability of funds from either, or a combination of, proceeds of revenue bonds or I-Bank equity funds.
6. **Repayment/Security:** Subordinate lien on the net Water System revenues.
7. **Interest Rate:** 67% of Thompson's Municipal Market Data Index for an "A" rated tax-exempt security with a weighted average life similar to the I-Bank financing based rates as of April 1, 2009.
8. **Fees:** Financing origination fee of 0.85% of the I-Bank financing amount and an annual fee of 0.30% of the outstanding principal balance.
9. **Type of Financing Agreement:** Installment Sale Agreement.
10. **Financing Agreement Covenants:** The Installment Sale Agreement shall include, among other things, the following covenants:
    a. Rates and charges shall be maintained sufficient to ensure 1.10 times aggregate annual debt service ratio for senior and parity obligations.
    b. Net Revenues from the Water System may not be pledged on a senior basis. Net revenues of the Water System may be pledged on a parity basis for future financing if net revenues (adjusted for rate increases and system expansion) will provide an aggregate future debt service coverage of 1.10 times maximum annual debt service on all parity debt, inclusive of the proposed financing.
    c. Applicant shall be authorized to prepay all or a portion of the outstanding principal balance according to the following: 102% of the outstanding principal balance if the prepayment date is on or after ten years, but less than eleven years, from the effective date of the Agreement, or 100% of the outstanding principal amount of the I-Bank bonds to which the Applicant's loan is pledged to repay and scheduled to be called for redemption as a result of the prepayment plus accrued interest on the bonds to be redeemed as of the date scheduled for redemption (Redemption Amount), whichever is greater; 101% of the outstanding principal balance if the prepayment date is on or after eleven years, but less than twelve years, from the effective date of the Agreement or the Redemption Amount, whichever is greater; or without premium if the prepayment date is twelve years or more from the effective date of the Agreement or the Redemption Amount, whichever is greater. The Applicant may on any date provide for a legal defeasance of the principal amount outstanding and any additional payment then due.
    d. An agreement to indemnify the I-Bank and its directors, officers and employees from any liability arising from the Installment Sale Agreement or from construction or operation of the Project.
11. **Conditions Precedent to Execution of I-Bank Installment Sale Agreement:**
    a. Applicant resolution authorizing the execution and delivery of the Installment Sale Agreement and approving certain other matters in connection therewith.
    b. Receipt of an opinion of legal counsel to Applicant that the Applicant has the legal authority to enter into the Installment Sale Agreement, that there is no litigation currently pending or threatened that would in any way affect pledged revenues, that the Installment

Sale Agreement is a legal, binding and enforceable agreement of the Applicant, and that the Applicant is not in default of any agreement or obligation secured by revenues of the water system.

c. Executed tax certificate.

12. **Conditions Precedent to Initial Disbursement:** The following are some of the conditions, which will be required precedent to the initial disbursement of I-Bank funds:
    a. Execution of an Installment Sale Agreement consistent with the terms contained herein.
13. Conditions Precedent to Construction Disbursement For Each Project Phase:
    a. Certification by the Applicant, the Applicant's legal counsel or other individual acceptable to the I-Bank that the Applicant:
        i. Has obtained the land, rights-of-way, easements, and orders of possession that are required for construction.
        ii. All required permits have been obtained.
    b. For each construction contract:
        i. A written statement by the Applicant, the Applicant's legal counsel other individual acceptable to the I-Bank that:
            1. All construction contracts necessary for the construction of the applicable Project component have been awarded, and were awarded pursuant to competitive bidding and the Applicant's procedures normally required for similar construction projects.
            2. Project costs for the applicable Project component are consistent with the Sources and Uses listed in this staff report; and
            3. Appropriate builder's risk insurance has been obtained and the policy names the Applicant as additional insured and loss payee, contractor has acquired and shall be required to maintain liability insurance and name the Applicant as an additional insured, and contractor shall be required to obtain performance and payment bond provisions and name the Applicant as additional payee.
            4. All construction contracts are let to the lowest responsible bidder at a fixed price subject to increase only for allowable extra work, change orders approved the Applicant, and damages or delays authorized by the laws of the State.
            5. All construction contracts require: payment of prevailing wage rates and compliance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code.
            6. All construction contracts require payment of workers' compensation insurance by contractors and subcontractors.
            7. All construction contracts include the nondiscrimination provisions.
            8. The Applicant has utilized the contractor pre-qualification forms developed by the Department of Industrial Relations as set forth in AB 574 (Chapter 972 of the Statutes of 1999) codified in Public Contract Code Section 20101 et seq.
        ii. Submittal of a copy of the complete construction contract.
        iii. Submittal of a copy of the contractor's builder's risk insurance policy, and a copy of the contractor's payment and performance bonds.

14. **Conditions Precedent to Final Disbursement:** The following are some of the conditions precedent to final disbursement of I-Bank funds:
    a. Recorded Notice of Completion or other evidence of completion for each Project component.
    b. Lien waivers for the Project, or passage of the applicable statutory time periods for filing mechanics and other similar liens.
    c. Certification that the Project has been completed in accordance with the approved plans and specifications, and that the completed Project is consistent with the definition of Project in this Staff Report and is acceptable to the Applicant.
    d. Certification that the Applicant has obtained all licenses and permits (including operating permits), and approvals from any governmental agency or authority having jurisdiction over the Applicant in connection with the Project.
15. **Financial and Other Reporting Requirements:**
    a. Audited annual Applicant financial statements, due to the I-Bank within 210 days of fiscal year end.
    b. Other information as the I-Bank reasonably may request from time to time.