

RESOLUTION NO. 10/11-26

**RESOLUTION OF THE BOARD OF EDUCATION OF
THE MT. DIABLO UNIFIED SCHOOL DISTRICT,
AUTHORIZING THE SUBMISSION OF AN APPLICATION
FOR QUALIFIED SCHOOL CONSTRUCTION BOND
ALLOCATION AND APPROVING CERTAIN ACTIONS IN
RELATION THERETO**

WHEREAS, the American Recovery and Reinvestment Act of 2009 (“ARRA”) authorizes the designation of certain bonds issued by or on behalf of public schools as “qualified school construction bonds” (“QSCBs”) in a principal amount of \$11 billion for calendar year 2010; and

WHEREAS, the Treasury Department of the United States has allocated \$720,058,000 in federal tax credit volume cap for QSCBs to the State of California (the “State”) for calendar year 2010, not including certain allocations made to large educational agencies (as defined in section 54F of the Internal Revenue Code of 1986, as amended (the “Code”)) of which \$651,652,000 is to be allocated to public school districts and county offices of education within the State; and

WHEREAS, Assembly Bill (AB) 2560 (“AB 2560”) authorizes the California Department of Education (the “CDE”) to assign and distribute the States’ federal tax credit volume cap for QSCBs to or for the benefit of school districts and county offices of education in the State in accordance with certain criteria set forth therein; and

WHEREAS, the issuance of not to exceed \$348,000,000 aggregate principal amount of general obligation bonds (the “Authorization”) of the District, County of Contra Costa (the “County”), State of California was authorized at an election (the “Election”) held in said District on June 8, 2010, the proceeds of which are to be used for the financing of the acquisition, construction, equipping, furnishing and improvement of certain capital facilities of the District; and

WHEREAS, the District has previously issued two series of general obligation bonds under the Authorization such that \$238,003,525 aggregate principal amount of general obligation bonds remain to be issued under the Authorization; and

WHEREAS, the Mt. Diablo Unified School District (the “District”) has a present need to construct, rehabilitate and repair school facilities and/or to acquire land on which to construct such a school facility and/or equipment to be used in such portion or portions of the school facility that is being constructed, rehabilitated, or repaired (the “Qualified Projects”); and

WHEREAS, the Board of Education of the District (the “Board”) has determined that it is necessary and desirable to submit an application in accordance with the requirements of AB 2560 (the “Application”) to the CDE for an authorization necessary to cause the Bonds to be issued as QSCBs;

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE MT. DIABLO UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, ORDER, AND DETERMINE AS FOLLOWS:

SECTION. 1 All the recitals in this resolution are true and correct and this Board of Education so finds, determines and represents.

SECTION. 2 Authorization to Submit Application. The Board hereby authorizes and directs the Superintendent of the District (the “Superintendent”) and/or the Chief Financial Officer or their deputy (each an “Authorized Officer”) to complete and submit an Application to the CDE on behalf of this Board for a portion of 2010 federal tax credit volume cap for QSCBs in the principal amount not to exceed \$25,000,000 and in the form prescribed by the CDE. The Superintendent is hereby authorized to execute the Application on behalf of this Board.

SECTION. 3 Qualified Projects Funded with General Obligation Bonds. The Qualified Projects to be funded with the QSCBs shall be funded by local voter-approved bonds issued by or on behalf the District, to wit, general obligation bonds or bond anticipation notes of the District issued under the Authorization.

SECTION. 4 No 2009 or 2010 Allocation. The District did not receive a 2009 or 2010 federal tax credit volume cap for QSCBs allocation.

SECTION. 5 Certifications. The Board hereby certifies, and directs the Superintendent to certify in the Application, that the District shall fulfill all of the federal QSCB program requirements, including the following:

- (i) 100 percent of the available project proceeds of any QSCBs issued by the District shall be used for the construction, rehabilitation, or repair of a school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue or the costs of acquisition of equipment to be used in such portion or portions of the school facility that is being constructed, rehabilitated, or repaired with the proceeds of QSCBs;
- (ii) within 6 months from the date of issuance of the QSCBs, the District shall enter into a contract for use of an amount of QSCB proceeds equal to 10 percent of the QSCB authorization;
- (iii) within three years from the date of issuance of the QSCBs, the District shall spend 100 percent of the QSCB proceeds for a Qualified Project;
- (iv) all laborers and mechanics employed by contractors or subcontractors on Qualified Projects funded by QSCB proceeds shall be paid wages and fringe benefits at rates not less than those prevailing on similar projects in the locality; and
- (v) applicable State and local law requirements governing conflicts of interest shall be satisfied with respect to the QSCBs and if any additional conflicts of interest rules are imposed by Internal Revenue Service Regulation, such additional rules shall be satisfied with respect to the QSCBs.

SECTION. 6 CDE Filings. This Board hereby directs the Authorized officers to submit or cause to be submitted, within fifteen (15) days of issuance of the QSCBs, a copy of IRS Form 8038 to the CDE, and, within 30 days of completion of the Qualified Projects, a completion report certified by Bond Counsel (as defined below).

SECTION. 7 Automatic Reversion of Unused Authorization. If any or all of the QSCB authorization to the District, assuming such authorization is granted to the District, is not issued within six months from the date of such authorization, then any or all unused federal QSCB authorization shall revert to the CDE without any further action required by this Board.

SECTION. 8 Reimbursement of Qualified Project Expenditures. The District hereby declares it intent to use proceeds of the QSCBs to reimburse itself for expenditures made on Qualified Projects prior to the issuance of the QSCBs (the “Reimbursable Expenditures”).

The above provision is made solely for the purpose of establishing compliance with the requirements of Section 54A(d)(2)(D) of the Code. This provision does not bind the District or the Board to make any expenditure, incur any indebtedness, or proceed with the financing, acquisition or construction of any Qualified Project.

SECTION. 9 Designation of Professionals. The Board hereby confirms the designation of Stone & Youngberg LLC, as senior underwriter with such co-managing underwriters as may be designated by the Authorized Officers, Isom Advisors, a Division of Urban Futures Incorporated, Walnut Creek, California, as Financial Advisor and the law firm of Matt Juhl Darlington & Associates, Chico, California, as Bond Counsel and Disclosure Counsel to the District in connection with the authorization and issuance of the QSCBs under the terms and conditions of their existing contracts with the District for professional services relating to the Authorization.

SECTION. 10 Ratification of Prior Acts. The President of this Board, the Board members, Authorized Officers and other officers and employees of the District are hereby authorized and directed, jointly and severally, to do any and all things which they may deem necessary or advisable to carry out, give effect to and comply with the terms and intent of this Resolution. All actions heretofore taken by the officers, employees and agents of the District with respect to the actions contemplated herein are hereby approved, confirmed and ratified.

SECTION. 11 This Resolution shall take effect from and after the date of adoption.

The foregoing resolution was, on the 26th day of October, 2010, adopted by the Board of Education of the Mt. Diablo Unified School District at a regular meeting by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

Clerk of the Board of Education of the Mt. Diablo
Unified School District

By: _____