

RESOLUTION NUMBER R- 255558

Adopted on DEC 15 1981

WHEREAS, the City Council of The City of San Diego (the "City") has, by Ordinance No. O-15586 (New Series), adopted by the Council on September 14, 1981, enacted an Act of The City of San Diego entitled the Economic Development Revenue Bond Law (the "Law"), amending Article 7 of Chapter IX of the Municipal Code of the City by adding Divisions 1, 2, 3 and 4, authorizing and establishing the procedures for the sale and issuance of revenue bonds by the City for the purpose of providing financing to participating parties for economic development purposes and authorizing the appropriate officers of the City to take any and all action, to execute and deliver any and all agreements and documents necessary or advisable to consummate the lawful issuance and delivery of the bonds authorized by the Law; and

WHEREAS, by its Application dated November 20, 1981, Merck & Co., Inc. (Kelco Division) (the "Participating Party") has requested the financial assistance of the City in connection with the costs of acquisition and construction of the Project Facilities generally described in Exhibit A hereto (and more particularly described in the Participating Party's Application) (the "Facilities"), and the Participating Party has requested that the City take action, subject to appropriate conditions, looking towards the issuance of its Economic Development Revenue Bonds (the "Bonds") for such purposes; and

WHEREAS, the City desires to assist the Participating Party in the financing of the Facilities; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

Section 1. The Council of the City finds and determines that construction and financing of the Facilities will be in furtherance of one or more of the

public purposes set forth in the Law and will promote the health, safety and welfare of the residents of the City and that it is necessary and essential and a proper public purpose that the Facilities be financed at the earliest practicable date.

Section 2. The Council of the City further finds that the Facilities are energy properties of the type described in Section 97.0301(b) of the Law and eligible to be financed by the Law.

Section 3. The City hereby undertakes to authorize and issue, up to an aggregate of \$30,000,000 of its Bonds, as may be requested by the Participating Party, in amounts sufficient to finance the costs of acquiring and constructing the Facilities described in Exhibit A, to the extent that, in the opinion of bond counsel, the interest on Bonds issued to provide such costs shall be exempt from federal income taxation.

Section 4. In light of the significance of the construction and financing of the Facilities to the Participating Party, to the City, and to its residents, the City further declares its intention to assist, subject to the additional conditions hereinafter stated, in financing through the issuance of its additional Bonds:

a. The cost of completion of the Facilities included within its present approval as stated in Section 3 hereof, to the extent the amount stated in Section 3 is not sufficient for that purpose, and

b. The cost of acquisition and construction of such of the Facilities, described in Exhibit A, if any, for which present approval is not given in Section 3, and to take such steps as may be necessary for that purpose, including possible modification of the Law.

Section 5. The City shall proceed to prepare or cause to be prepared the documentation necessary for the City to issue Bonds as aforesaid, the

Participating Party having paid the required application fee and having provided satisfactory assurance that it will bear the cost of preparation of the necessary financing documents.

Section 6. The Bonds shall be payable solely from the revenues to be received by the City pursuant to one or more loan agreements or other agreements to be entered into by the City and the Participating Party in connection with the financing of the Facilities, under which the Participating Party will be obligated to pay amounts sufficient to make all payments of principal, premium (if any) and interest on the bonds when due, and the Bonds shall not be deemed to constitute a debt or liability of the City under any constitutional charter or statutory debt limitations. Neither the faith and credit nor the taxing powers of the City shall be subject to the payment of the principal of, or premium, if any, or interest on the Bonds.

Section 7. Preparation of the necessary documents and issuance of the Bonds shall be subject to the following conditions:

- a. The City and the Participating Party shall first agree to mutually acceptable terms for the offer and sale of the Bonds and the sale and delivery thereof and mutually acceptable terms and conditions for the loan or other agreement for the financing of the Facilities, reserving to each party the unrestricted discretion to determine when in each such party's sole judgment such terms are acceptable; and
- b. All requisite governmental approvals shall have first been obtained; and
- c. The Law shall be in effect.

Section 8. Issuance of additional Bonds for the purposes stated in Section 4 hereof shall be subject to the following additional conditions:

- a. In the opinion of bond counsel, issuance of the Bonds is then permitted by applicable law; and

b. Such additional financing is then demonstrated to serve one or more of the same public purposes as the amounts presently approved; and

c. Such additional financing (except with respect to the completion costs referred to in subsection a. of Section 4 hereof) is consistent with the City's other financing objectives and requirements at such time.

Section 9. It is the purpose and intent of the City that this resolution constitutes official action toward the issuance of obligations by the City for the Facilities in accordance with Section 1.10308(a)(5)(iii) of the Regulations promulgated by the United States Department of the Treasury under Section 103 of the Internal Revenue Code of 1954, as amended.

Section 10. The Participating Party's selection of Drinker Biddle & Reath, 1100 Philadelphia National Bank Building, Broad and Chestnut Streets, Philadelphia, Pennsylvania, 19107, as bond counsel, is hereby approved.

Section 11. Whether any bonds are issued or not, the City shall not be put to any expense hereby and any and all costs of this application shall be borne by the Participating Party.

APPROVED: John W. Witt, City Attorney

By Stuart H. Swett
Stuart H. Swett
Chief Deputy City Attorney

SHS:rc:112.4

12/9/81

Or.Dept: Councilwoman Killea

R-82-1025

EXHIBIT A

FACILITIES

Project Facilities consist of the following:

Total estimated direct and indirect Project costs for land, materials, labor and overheads, together with indirect cost of Participating Party including design, engineering, construction supervision, environmental and Licensing expenses, and other allocable overheads and present estimates for escalation and contingencies for the creation of electricity cogeneration facilities described in the Application.

R-255558
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DEC 15 1981

Passed and adopted by the Council of The City of San Diego on _____,
by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struikma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

By *Bartina Berridge*, Deputy.

(Seal)

Office of the City Clerk, San Diego, California

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