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4/09/07

RESOLUTION NUMBER R- 302501

DATE OF FINAL PASSAGE APR 19 2007

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A SUBORDINATE INSTALLMENT PURCHASE AGREEMENT AND A NOTE PURCHASE AGREEMENT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF A SUBORDINATE INDENTURE AND THE ISSUANCE AND SALE BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF ITS SUBORDINATE SEWER REVENUE NOTES IN A PRINCIPAL AMOUNT NOT TO EXCEED \$225,000,000 TO REFINANCE EXISTING SUBORDINATE DEBT AND FINANCE NEW FACILITIES; AUTHORIZING THE CITY ATTORNEY TO APPOINT CO-BOND COUNSEL FOR THE SUBORDINATE SEWER REVENUE NOTES; AND APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of San Diego [City] and the Redevelopment Agency of the City of San Diego entered into a Joint Exercise of Powers Agreement, dated as of May 14, 1991, as amended and restated as of January 11, 1999, and as again amended and restated on October 29, 2002, establishing the Public Facilities Financing Authority of the City of San Diego [Authority], a California joint exercise of powers authority duly organized to provide financing assistance to the City; and

WHEREAS, in 1993, 1995, 1997 and 1999, the Authority, at the request of the City, issued its Sewer Revenue Bonds [Parity Obligations] payable pursuant to a certain Master Installment Purchase Agreement, dated as of September 1, 1993, as amended and supplemented between the City and the Authority [MIPA] to fund certain capital improvements to the City's Wastewater System and in 2004 issued \$152,000,000 of its Subordinated Sewer Revenue Bonds

[2004 Subordinated Bonds] payable under a 2004 Supplement to the MIPA to fund additional capital improvements to the City's Wastewater System; and

WHEREAS, the City has an urgent need to make additional capital improvements to its Wastewater System and has requested the assistance of the Authority in funding and reimbursing the City for such additional capital improvements [Project] through the issuance by the Authority of its Subordinate Sewer Revenue Notes, Series 2007A [New Subordinate Notes]; and

WHEREAS, the Council finds that in order to pursue additional financing to fund the Project, it is also necessary, in accordance with the documents related to the 2004 Subordinated Bonds, to refund the 2004 Subordinated Bonds with a portion of the proceeds of the New Subordinate Notes; and

WHEREAS, to provide for payment of the New Subordinate Notes, the City and the Authority will enter into a new Subordinate Installment Purchase Agreement to provide for subordinate installment payments by the City; and

WHEREAS, the new Subordinate Installment Purchase Agreement will also establish certain terms relevant to any future issuance of "New Senior Bonds" payable from Net System Revenues on a basis senior to the New Subordinate Notes so long as the New Subordinate Notes are outstanding; and

WHEREAS, the Council finds that the financing of the Project results in significant public health benefits, including but not limited to more efficient delivery of service, and that the Project constitutes facilities for the transmission and treatment of sewage, recycled or reclaimed water, or wastewater; and

WHEREAS, the New Subordinate Notes will be issued as two year short-term notes with the expectation that the New Subordinate Notes will be refunded by long-term bonds or extended at or prior to maturity when the City expects to be able to access the capital markets on more advantageous terms; and

WHEREAS, there has been presented to this meeting the following documents relating to the issuance of New Subordinate Notes:

a. a proposed form of Subordinate Installment Purchase Agreement [New Subordinate IPA] between the Authority and the City, a copy of which is on file in the office of the City Clerk as document number RR-302501-1, under which the City will make subordinated installment payments to the Authority, which the Authority will use to make payments on the New Subordinate Notes, and will make certain provisions for New Senior Bonds; and

b. a proposed form of Subordinate Indenture of Trust [New Subordinate Indenture] between the Authority and the Note Trustee, a copy of which is on file in the office of the City Clerk as document number RR-302501-2, under which the Authority will issue its New Subordinate Notes; and

c. a proposed form of Note Purchase Agreement [Note Purchase Agreement], a copy of which is on file in the office of the City Clerk as document number RR- 302501-3, by and among the City, the Authority and Citigroup Global Markets, Inc., as purchaser; and

WHEREAS, the City is authorized to undertake all of the actions described in this Resolution pursuant to its Charter and the Constitution and other applicable laws of the State of California; NOW, THEREFORE,

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

Section 1. The City Council hereby finds and determines that the statements set forth above in the recitals to this Resolution are true and correct.

Section 2. The Council hereby finds that the Project will provide significant public benefits in accordance with the criteria specified in section 6586 of the Government Code.

Section 3. The City has determined that it is in the best interests of the City to refund the 2004 Subordinated Bonds and fund the Project by issuing the New Subordinate Notes pursuant to the New Subordinate Indenture, which New Subordinate Notes will be payable from subordinate installment payments made by the City in accordance with the New Subordinate IPA.

Section 4. The form and content of the New Subordinate IPA to be dated as of May 1, 2007 (or such other date as the parties thereto may determine), among the Authority and the City, a copy of which is on file in the office of the City Clerk and submitted to this meeting, is hereby approved; provided however that approval of such new Subordinate IPA does not authorize the issuance of any New Senior Bonds at this time. Any of the Mayor, the Chief Operating Officer or the Chief Financial Officer and each of them or any of their respective designees [each, an Authorized Signatory] are hereby severally authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the New Subordinate IPA in substantially the form submitted to this meeting, with such additions and changes therein as any Authorized Signatory shall approve as being in the best interests of the City, and as approved as to form by the City Attorney or his specified designee, and with such other changes as are required by the City Attorney and/or Nixon Peabody LLP or Robinson & Pearman LLP as Co-Bond Counsel [Co-Bond Counsel], such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The City Council acknowledges and consents to the Authority's execution and delivery of the New Subordinate Indenture to be dated as of May 1, 2007 (or such other date as the parties thereto may determine) substantially in the form submitted to this meeting, a copy of which is on file in the office of the City Clerk. Any Authorized Signatory is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver any requested certificate or instrument evidencing the City's approval of the New Subordinate Indenture and the Authority is hereby authorized and directed to execute and deliver the New Subordinate Indenture in substantially the form presented to this meeting, with such additions and changes therein as any Authorized Signatory shall approve as being in the best interests of the City, and as approved as to form by the City Attorney or his specified designee, and with such other changes that may be required by the City Attorney and/or Co-Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The City hereby authorizes and approves the refunding of the 2004 Subordinated Bonds by making prepayments of the installment purchase payments due thereunder to be financed by the issuance of the New Subordinate Notes.

Section 7. The City hereby requests the Authority to approve and authorize the issuance and sale of the New Subordinate Notes in an amount not to exceed Two Hundred Twenty-Five Million Dollars (\$225,000,000) by private offering provided that: (i) the interest rate on the New Subordinate Notes does not exceed the maximum legal rate; and (ii) the final maturity of the New Subordinate Notes shall not exceed 25 months from their date of issuance. The City shall use its best efforts to cause the New Subordinate Notes to be refunded or extended at or prior to the maturity thereof.

Section 8. The form and content of the Note Purchase Agreement relating to the private placement of the New Subordinate Notes submitted to this meeting, a copy of which is on file in the office of the City Clerk, is hereby approved. Any Authorized Signatory is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the Note Purchase Agreement in substantially the form presented to this meeting, and the City Clerk is authorized to attest thereto, with such additions and changes therein as any Authorized Signatory shall approve as being in the best interests of the City, and as approved as to form by the City Attorney or his specified designee, and with such other changes that may be required by the City Attorney and/or Co-Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 9. All actions heretofore taken by any officers, employees or agents of the City with respect to (i) the issuance, delivery, or sale of the New Subordinate Notes, (ii) the refunding and redemption of the 2004 Subordinated Bonds, (iii) Co-Bond Counsel in connection with or related to any the documents referenced herein, or (iv) the financing or refinancing of the Project, are hereby approved, confirmed and ratified; and any Authorized Signatory and any such other officers, employees or agents of the City as may be authorized by the Mayor, the Chief Operating Officer or the Chief Financial Officer are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions including, without limitation, payment of necessary and appropriate fees and expenses and execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable to consummate the transactions evidenced by the documents referenced herein in accordance with this Resolution; provided that any funds derived from the proposed wastewater financings shall be restricted to benefit the Wastewater System.

Section 10. Any Authorized Signatory, and each of them, are hereby authorized and directed to take all actions and execute any and all documents necessary or advisable to arrange for the insuring of all or a portion of the New Subordinate Notes or to obtain a debt service reserve fund surety bond, or to obtain or add any other form of credit or liquidity enhancement, if, upon the consultation and advice of the City's financial advisors with respect to the New Subordinate Notes, such insurance, surety bond or other credit enhancement will result in a lower true interest cost or other savings to the City.

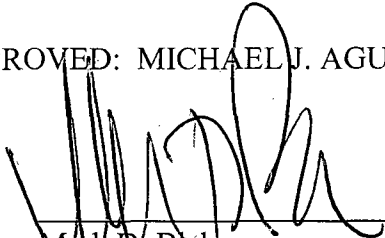
Section 11. The City Attorney or his specified designee is authorized to retain Nixon Peabody LLP and Robinson & Pearman LLP as co-bond counsel for the City and the Authority in connection with the issuance of the New Subordinate Notes under such contracts or other arrangements as the City Attorney or his specified designee shall approve as being in the best interests of the City. The City Attorney or his specified designee is further authorized to pay the fees of Nixon Peabody LLP in an amount not to exceed \$150,000 plus reasonable out-of-pocket expenses not to exceed \$5,000 and to pay Robinson & Pearman LLP an amount not to exceed \$60,000 plus reasonable out-of-pocket expenses not to exceed \$5,000; provided however the fees payable to co-bond counsel shall be contingent upon the closing of the transaction.

Section 12. Any Authorized Signatory is authorized to execute a First Amendment to the Agreement between the City and Montague DeRose and Associates, dated October 18, 2005, to increase the authorized amount under the Agreement by \$15,000 for as needed financial advisory services related to wastewater financings.

Section 13. That this Resolution shall take effect immediately upon its adoption.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
\_\_\_\_\_  
Mark D. Blake  
Chief Deputy City Attorney


MDB:ai:jdf  
03/20/07  
Or.Dept:Financial Mgt  
04/09/07.COR.Copy

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of ~~APR 09 2007~~.

ELIZABETH S. MALAND  
City Clerk

By   
\_\_\_\_\_  
Deputy City Clerk

Approved: 5-3-07  
(date)

  
\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor



**The City of San Diego**  
**CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

**CERTIFICATE OF UNALLOTTED BALANCE**

ORIGINATING

AC 2700628

DEPT. NO.: 056

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

| ACCTG. LINE  | CY PY | FUND | DEPT | ORG. | ACCOUNT | JOB ORDER | OPERATION ACCOUNT | BENF/ EQUIP | FACILITY | AMOUNT |
|--------------|-------|------|------|------|---------|-----------|-------------------|-------------|----------|--------|
|              |       |      |      |      |         |           |                   |             |          |        |
|              |       |      |      |      |         |           |                   |             |          |        |
|              |       |      |      |      |         |           |                   |             |          |        |
|              |       |      |      |      |         |           |                   |             |          |        |
|              |       |      |      |      |         |           |                   |             |          |        |
| TOTAL AMOUNT |       |      |      |      |         |           |                   |             |          |        |

FUND OVERRIDE

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$15,000.00

Vendor: Montague DeRose and Associates

Purpose: Authorizing the expenditure of funds for the financial advisory services related to the Wastewater financings.

Date: March 16, 2007 By: \_\_\_\_\_

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

| ACCTG. LINE  | CY PY | FUND  | DEPT | ORG. | ACCOUNT | JOB ORDER | OPERATION ACCOUNT | BENF/ EQUIP | FACILITY | AMOUNT      |
|--------------|-------|-------|------|------|---------|-----------|-------------------|-------------|----------|-------------|
| 01           | 0     | 41509 | 777  | 445  | 4151    | 005024    |                   |             |          | \$15,000.00 |
|              |       |       |      |      |         |           |                   |             |          |             |
|              |       |       |      |      |         |           |                   |             |          |             |
|              |       |       |      |      |         |           |                   |             |          |             |
| TOTAL AMOUNT |       |       |      |      |         |           |                   |             |          | \$15,000.00 |

FUND OVERRIDE