

ORDINANCE NUMBER O- **19747**

DATE OF FINAL PASSAGE MAY 06 2008

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AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE LEASE, A LEASE, AND A PURCHASE AGREEMENT AND AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AN ASSIGNMENT AGREEMENT AND AN INDENTURE BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, AND APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$108,000,000 OF THE AUTHORITY'S LEASE REVENUE BONDS, SERIES 2008A (VARIOUS CAPITAL IMPROVEMENT PROJECTS), APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCIAL ADVISORY SERVICES AGREEMENT, AUTHORIZING THE CITY ATTORNEY TO APPOINT BOND COUNSEL, AND APPROVING OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California authorizes and empowers local agencies to form a joint powers authority and Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California [Marks-Roos Local Bond Pooling Act of 1985] authorizes and empowers such authority to issue bonds for the purpose of financing public capital improvements or projects to further public purposes and effect significant public benefits, as determined by the local agency; and

WHEREAS, The City of San Diego [City] and the Redevelopment Agency of the City of San Diego [Agency] have heretofore entered into a Joint Exercise of Powers Agreement dated May 14, 1991 [Joint Powers Agreement] as amended and restated, which created and established the Public Facilities Financing Authority of the City of San Diego [Authority] for the purpose,

among others, of issuing its bonds to be used to provide financial assistance to the City to finance public capital improvements, including but not limited to general municipal improvements; and

WHEREAS, the City has determined that (i) the issuance of the Series 2008A Bonds (defined below) by the Authority is desirable and furthers public purposes; (ii) there are significant public benefits to be derived from securing the assistance of the Authority in financing the construction, renovation, improvement and equipping of the certain public facilities for the City [collectively, the Project]; and (iii) the Project will be located within the geographic boundaries of the City and (iv) the City will be able to more efficiently deliver services to residential and commercial development as a result of the financing; and

WHEREAS, the Council of the City made the aforementioned determination after holding a public hearing on the date thereof and hearing all interested persons desiring to be heard; and

WHEREAS, a notice of public hearing was duly published once at least five days prior to the hearing in a newspaper of general circulation in the City; and

WHEREAS, in order to achieve such public purposes, the City desires to approve the Authority's issuance of not to exceed \$108,000,000 aggregate principal amount of the Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2008A (Various Capital Improvement Projects) [the Series 2008A Bonds]; and

WHEREAS, in order to provide moneys for such public purposes, the City will lease certain real property of the City [Leased Property] to the Authority pursuant to a Site Lease [Site Lease]; and

WHEREAS, the Authority has determined to issue the Series 2008A Bonds, all pursuant to and secured by an Indenture [Indenture] by and between the Authority and Wells Fargo Bank, National Association [Trustee]; and

WHEREAS, in order to provide for the repayment of the Series 2008A Bonds, the Authority will lease the Leased Property to the City pursuant to a Lease [Lease] under which the City will agree to make base rental payments to the Authority [Base Rental Payments] which will be calculated to be sufficient to enable the Authority to pay the principal of and interest and premium (if any) on the Series 2008A Bonds when due and payable; and

WHEREAS, the Authority desires to assign without recourse all of its right to receive the Base Rental Payments scheduled to be paid by the City under and pursuant to the Lease to the Trustee for the benefit of the owners of the Series 2008A Bonds pursuant to an Assignment Agreement [Assignment Agreement] by and between the Authority and the Trustee; and

WHEREAS, the Series 2008A Bonds will be issued under the provisions of the Marks-Roos Local Bond Pooling Act of 1985 and the Indenture; and

WHEREAS, the Authority proposes to sell the Series 2008A Bonds pursuant to a negotiated sale pursuant to the terms of the Series 2008A Bond Purchase Agreement [Purchase Agreement] among the City, the Authority and Bank of America, N.A. [Purchaser], a form of which is on file with the Office of the City Clerk; and

WHEREAS, there has been presented to this meeting the following documents relating to the issuance of the Series 2008A Bonds:

a. a proposed form of Site Lease between the City and the Authority, a copy of which is on file in the office of the City Clerk as document number OO- 19747 -1 under which the City will lease the Leased Property to the Authority;

b. a proposed form of Lease between the Authority and the City, a copy of which is on file in the office of the City Clerk as document number OO - 19747-2, under which the Authority will lease the Leased Property to the City;

c. a proposed form of Assignment Agreement between the Authority and the Trustee, a copy of which is on file in the office of the City Clerk as document number OO - 197473, under which the Authority assigns to the Trustee for the benefit of bondholders its rights under the Site Lease and Lease;

d. a proposed form of Indenture between the Authority and the Trustee, a copy of which is on file in the office of the City Clerk as document number OO - 19747-4 under which the Authority will issue its Series 2008A Bonds;

e. a proposed form of Purchase Agreement, a copy of which is on file in the office of the City Clerk as document number OO - 197475, by and among the City, the Authority and the Purchaser; and

f. a proposed form of Financial Advisory Services Agreement [Financial Advisory Services Agreement], a copy of which is on file in the office of the City Clerk as document number OO - 19747-6, by and between the City and Montague DeRose and Associates, LLC [Financial Advisor]; and

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

NOW, THEREFORE,

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

Section 1. All of the foregoing recitals are true and correct, and the City Council so finds and determines.

Section 2. The form and content of the Site Lease, pursuant to which the City agrees to lease the Leased Property to the Authority, is hereby authorized and approved. 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 and on behalf of the City, to execute and deliver the Site Lease in substantially the form presented to and considered at this meeting, and the City Clerk or her specified designees, and each of them, are authorized and directed to attest thereto, with such additions and changes therein as any Authorized Signatory, in consultation with the City Attorney, shall require or approve as being in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approval to be conclusively evidenced by such Authorized Signatory's execution and delivery of the Site Lease.

Section 3. The form and content of the Lease, pursuant to which the Authority agrees to lease to the City the Leased Property, is hereby authorized and approved. Any Authorized Signatory is hereby severally authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Lease in substantially the form presented to and considered at this meeting, and the City Clerk or her specified designees, and each of them, are authorized and directed to attest thereto, with such additions and changes therein as any Authorized Signatory, in consultation with the City Attorney, shall require or approve as being in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approval to be conclusively evidenced by such Authorized Signatory's execution and delivery of the Lease.

Section 4. The form and content of the Assignment Agreement, pursuant to which the Authority assigns to the Trustee the Authority's rights under the Site Lease and the Lease,

and the execution, delivery and performance thereof by the Authority, are hereby authorized and approved. Each Authorized Signatory is authorized and directed to take such action as is necessary or appropriate to effectuate the transactions set forth in the Assignment Agreement with such additions and changes therein as any Authorized Signatory shall require or approve as being in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approval will be conclusively evidenced by such Authorized Signatory's execution and delivery thereof.

Section 5. The form and content of the Indenture, pursuant to which the Authority will issue its Bonds, and the execution, delivery and performance thereof by the Authority, are hereby authorized and approved. Each Authorized Signatory is authorized and directed to take such action as is necessary or appropriate to effectuate the transactions set forth in the Indenture with such additions and changes therein as any Authorized Signatory shall require or approve as being in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approval will be conclusively evidenced by such Authorized Signatory's execution and delivery thereof.

Section 6. The City hereby requests the Authority to approve and authorize the issuance and sale of the Series 2008A Bonds in an amount not to exceed One Hundred Eight Million Dollars (\$108,000,000) by private sale provided that: (i) the interest rate on the Series 2008A Bonds from their date of issuance through June 1, 2010 does not exceed 5.45 percent per annum and the interest rate on the Series 2008A Bonds subsequent to June 1, 2010 through the final maturity thereof will be as determined pursuant to the Indenture, provided such rate shall not exceed 12 percent per annum, (ii) the final maturity of the Series 2008A Bonds shall not be

later than ten years following their date of issuance, and (iii) the costs of issuance on the Series 2008A Bonds does not exceed \$302,000.

Section 7. The anticipated source of revenue for payment of the Series 2008A Bonds hereby authorized is the Base Rental Payments under and as defined in the Lease.

Section 8. The form and content of the Purchase Agreement are hereby authorized and approved. Any Authorized Signatory is hereby authorized and directed for and in the name and on behalf of the City, to execute and deliver the Purchase Agreement in connection with the purchase and sale of the Series 2008A Bonds, substantially in the form presented to and considered at this meeting, with such changes and additions therein as such Authorized Signatory shall require or approve as being in the best interests of the City and as are approved as to form by the City Attorney or his specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 9. This Ordinance is subject to the provisions of the San Diego Municipal Code and San Diego City Charter. Subject to those provisions, this Ordinance shall take effect and be in force thirty (30) days from and after the date of its adoption and, prior to the expiration of fifteen (15) days from the passage hereof, the City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the City.

Section 10. Any Authorized Signatory, and each of them, is hereby authorized to make necessary arrangements with an appropriate title insurance company to issue a title insurance binder with respect to land that may become the subject of the Site Lease and the Lease and to execute any agreement required for retention of such title insurance company or companies.

Section 11. The Financial Advisory Services Agreement by and between the City and Financial Advisor to provide financial advisory services to the City and the Authority in connection with the Series 2008A Bonds, the form and content of which agreement has been presented to this meeting, for an amount not to exceed \$37,500 plus reasonable out-of-pocket expenses not to exceed \$5,000, is hereby authorized and approved. Each Authorized Signatory is authorized and directed to take such action as is necessary or appropriate to effectuate the transactions set forth in the Financial Advisory Services Agreement with such additions and changes therein as any Authorized Signatory shall require or approve as being in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approval will be conclusively evidenced by such Authorized Signatory's execution and delivery thereof.

Section 12. The City Attorney or his specified designee is authorized to retain Hawkins Delafield & Wood LLP as bond counsel for the City and the Authority [Bond Counsel] under such contract or other arrangement 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 Bond Counsel in an amount not to exceed \$70,000 plus reasonable out-of-pocket expenses not to exceed \$5,000.

Section 13. All actions heretofore taken by any officers, employees or agents of the City with respect to the issuance, delivery or sale of the Series 2008A Bonds, or in connection with or related to any of the documents referenced herein or the refinancing of the Project, are hereby approved, confirmed and ratified; and such other officials, employees and agents of the City as may be authorized by any Authorized Signatory are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions




Section 14. including, without limitation, payment of necessary and appropriate fees and expenses of bond counsel, financial advisor and other professionals retained by the City under contracts approved by the City Attorney and execute and deliver any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Series 2008A Bonds and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 15. A full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 16. This Ordinance shall take effect immediately upon its adoption by the Council of the City and its ratification by the Mayor.


APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Mark D. Blake  
Chief Deputy City Attorney


MDB:jdf  
03/17/08  
OR.Dept: Debt Management  
O-2008-129

I hereby certify that the foregoing Ordinance was passed by the Council of The City of San Diego, at this meeting of MAY 6 2008

ELIZABETH S. MALAND  
City Clerk

By:   
Deputy City Clerk

Approved: 5-6-08  
(date)

  
JERRY SANDERS, Mayor

N/A

Passed by the Council of The City of San Diego on \_\_\_\_\_, 2008, by the following vote:

**YEAS:**

**NAYS:**

**NOT PRESENT:**

**VACANT:**

AUTHENTICATED BY:

**JERRY SANDERS**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

By: \_\_\_\_\_, Deputy

I HEREBY CERTIFY that the above and forgoing is a full, true and correct copy of ORDINANCE NO. O-\_\_\_\_\_, approved by the Mayor of The City of San Diego, California on \_\_\_\_\_.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By: \_\_\_\_\_, Deputy