

RESOLUTION NUMBER R- 303424

DATE OF FINAL PASSAGE FEB 20 2008

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORM OF AND AUTHORIZING THE ISSUANCE OF THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO SUBORDINATED WATER REVENUE NOTES, SERIES 2008A (PAYABLE SOLELY FROM SUBORDINATED INSTALLMENT PAYMENTS SECURED BY NET SYSTEM REVENUES OF THE WATER UTILITY FUND) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED ONE HUNDRED FIFTY MILLION DOLLARS, APPROVING THE FORM OF AN INDENTURE, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A NOTE PURCHASE AGREEMENT AND A 2008A SUPPLEMENT TO THE MASTER INSTALLMENT PURCHASE AGREEMENT RELATING TO AN INSTALLMENT PURCHASE FINANCING, AUTHORIZING THE CITY ATTORNEY TO APPOINT BOND COUNSEL AND DISCLOSURE COUNSEL AND APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of San Diego, California [City], and the Redevelopment Agency of the City of San Diego have previously entered into a Joint Exercise of Powers Agreement establishing the Public Facilities Financing Authority of the City of San Diego [Authority], a California joint exercise of powers entity duly organized and established to finance, acquire, construct, maintain, repair, operate and control certain capital facilities improvements for the City; and

WHEREAS, the San Diego Facilities and Equipment Leasing Corporation [Corporation] is a nonprofit charitable corporation duly organized and existing under and by virtue of the laws of the State of California [State] that was incorporated to acquire and lease and/or sell to the City real and personal property to be used in the municipal operations of the City; and

WHEREAS, the Corporation previously executed and delivered \$385,000,000 original principal amount of its Certificates of Undivided Interest (In Installment Payments Payable from Net System Revenues of the Water Utility Fund of the City of San Diego) Series 1998 [1998

Certificates] and the Authority previously issued \$286,945,000 original principal amount of its Subordinated Water Revenue Bonds, Series 2002 (Payable Solely From Subordinated Installment Payments Secured By Net System Revenues of the Water Utility Fund) [2002 Subordinated Bonds] and \$57,000,000 original principal amount of its Non-Transferable Subordinated Water Revenue Notes, Series 2007A (Payable Solely from Subordinated Installment Payments Secured By Net System Revenues of the Water Utility Fund) [Series 2007A Subordinated Notes] to, among other things, finance the acquisition, construction, installation, and improvement of a portion of the City's water system; and

WHEREAS, in order to effectuate the acquisition, construction, installation and improvement of a portion of the City's water system with the proceeds of the 1998 Certificates, the 2002 Subordinated Bonds and the Series 2007A Subordinated Notes, the Corporation sold components of the water system financed with the proceeds of the 1998 Certificates, the 2002 Subordinated Bonds and the Series 2007A Subordinated Notes to the City pursuant to a Master Installment Purchase Agreement, dated as of August 1, 1998, as amended by a First Amendatory Supplement, dated as of September 19, 2002, and a Second Amendatory Supplement, dated as of January 1, 2007, and supplemented by a 1998 Supplement to Master Installment Purchase Agreement, dated as of August 1, 1998, a 2002 Supplement to Master Installment Purchase Agreement, dated as of October 1, 2002, and a 2007A Supplement to Master Installment Purchase Agreement, dated as of January 1, 2007, each by and between the Corporation and the City (as may be subsequently amended and supplemented from time to time, the "Installment Purchase Agreement"); and

WHEREAS, the City desires to effect the further acquisition, construction, installation and improvement of its water system [2008A Components]; and

WHEREAS, in order to facilitate the financing of and reimbursement to the City for the 2008A Components, the City and the Corporation propose to enter into a 2008A Supplement to the Installment Purchase Agreement [2008A Supplement], amending and supplementing the Installment Purchase Agreement; and

WHEREAS, to further facilitate the proposed financing, the Corporation, as assignor, will execute an Assignment Agreement [Assignment Agreement] pursuant to which the Corporation will assign all of its right, title and interest in and to the 2008A Supplement to the Authority, as assignee; and

WHEREAS, under the Installment Purchase Agreement, the 2008A Supplement and the Assignment Agreement, the City will be obligated to make 2008A Subordinated Installment Payments (as defined in the 2008A Supplement) to the Authority; and

WHEREAS, to provide funds to finance and to reimburse the City for certain costs of the 2008A Components and to pay costs of issuance, the City wishes to request the Authority to issue its Subordinated Water Revenue Notes, Series 2008A (Payable Solely from Subordinated Installment Payments Secured By Net System Revenues of the Water Utility Fund) [Series 2008A Subordinated Notes]; and

WHEREAS, the City and the Authority intend for the issuance of the Series 2008A Subordinated Notes to serve as a bridge financing in anticipation of, and to be refunded by, the future issuance of the Authority's water revenue bonds; and

WHEREAS, section 1.150-2 of the United States Treasury Regulations [Regulations] requires the City to declare its reasonable intent to reimburse certain costs of the 2008A Components [Reimbursable Expenditures] with the proceeds of the Series 2008A Subordinated Notes, prior to the date of issuance thereof, and that a portion of the proceeds of the Series

2008A Subordinated Notes in an amount up to \$10,000,000 will be used to reimburse the City for the Reimbursable Expenditures; and

WHEREAS, to provide for the authentication and delivery of the Series 2008A Subordinated Notes, to establish and declare the terms and conditions upon which the Series 2008A Subordinated Notes are to be issued and to secure the repayment thereof, it is proposed that the Authority enter an Indenture [2008A Notes] [2008A Indenture] with Wells Fargo Bank, National Association; and

WHEREAS, in order to provide for the sale of the Series 2008A Subordinated Notes, the City and the Authority propose to enter into a Note Purchase Agreement [Note Purchase Agreement] with J.P. Morgan Securities Inc. [Purchaser] for the purchase of the Series 2008A Subordinated Notes; and

WHEREAS, the Series 2008A Subordinated Notes shall mature eighteen months following their date of issuance, and the City will be required to repay the principal of the Series 2008A Subordinated Notes with the proceeds of bonds or other obligations to be issued by the Authority on or before said maturity date, which bonds or other obligations will be secured by installment payments to be made by the City to the Corporation (and assigned to the Authority) for the purchase of the 2008A Components and certain other components of the Water System; and

WHEREAS, this City Council of the City of San Diego [City Council] finds that the financing of the 2008A Components results in significant public health benefits, including but not limited to more efficient delivery of service, that said financing will assist the City in complying with the requirements of the Department of Public Health of the State, and further

finds that the 2008A Components constitute facilities for the production, storage, transmission, or treatment of water or recycled water; and

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

BE IT RESOLVED by the City 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 of this Resolution are true and correct. The City Council specifically declares its reasonable official intention to use proceeds of the Series 2008A Subordinated Notes to reimburse itself for the Reimbursable Expenditures.

Section 2. The method of financing the acquisition, construction, installation and improvement of the Project through the issuance by the Authority of the Series 2008A Subordinated Notes in the aggregate principal amount not to exceed One Hundred Fifty Million Dollars (\$150,000,000), as determined by the Mayor, the Chief Operating Officer, the Chief Financial Officer or their respective designees, or any of them (each, an "Authorized Officer") in consultation with the financial advisors to the City, in accordance with the Indenture, is hereby approved, and specifically, the form of the 2008A Indenture submitted to this meeting, a copy of which is on file in the office of the City Clerk, is hereby approved in substantially final form, with such changes therein, however, as the Authorized Officer may approve, such approval to be conclusively evidenced by his or her execution thereof.

Section 3. The form, terms and provisions of the 2008A Supplement, between the City and the Corporation, a copy of which is on file in the office of the City Clerk and submitted to this meeting, is hereby approved. The Authorized Officers, and each of them acting alone or

together, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the 2008A Supplement in substantially the form submitted to this meeting, and the City Clerk is authorized to attest thereto, with such additions and changes therein as the Authorized Officers 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 Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, that the aggregate amount of 2008A Subordinated Installment Payments attributable to principal shall not exceed One Hundred Fifty Million Dollars (\$150,000,000), and the 2008A Subordinated Installment Payments shall be payable quarterly or otherwise as the Authorized Officer, in his or her respective discretion, may direct through their stated maturity or earlier prepayment date, and with respect to payments by the City of the amount of 2008A Subordinated Installment Payments attributable to interest, the stated interest rate shall not exceed five and one half percent (5.50%) per annum, and the Authorized Officers, and each of them acting alone or together, are hereby authorized and directed to approve provisions for the prepayment of the 2008A Subordinated Installment Payments. The City has reserved the right under the Installment Purchase Agreement, to modify or amend from time to time the description of the 2008A Components more particularly set forth in Exhibit A to the 2008A Supplement to reduce or eliminate any parts thereof or to substitute capital projects to be financed with proceeds of the Series 2008A Subordinated Notes.

Section 4. The City hereby acknowledges that the obligation of the City to make 2008A Subordinated Installment Payments to the Authority, in accordance with the Assignment Agreement, a copy of which is on file in the Office of the City Clerk, shall be a limited obligation of the City payable solely from Net System Revenues (as such term is defined in the

Installment Purchase Agreement) and other funds provided for under the 2008A Supplement and the 2008A Indenture, and does not constitute a debt of the City or the Authority or of the State or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction. In accordance with the Assignment Agreement, the assignment by the Corporation of the City's obligations under the 2008A Supplement to the Authority is hereby approved.

Section 5. The form and content of the Note Purchase Agreement, among the Authority, the City and the Purchaser, a copy of which is on file in the office of the City Clerk and submitted to this meeting, is hereby approved. The Authorized Officers, and each of them acting alone or together, are 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 submitted to this meeting, with such additions and changes therein as any Authorized Officer 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 Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof. In connection with the execution and delivery of the Note Purchase Agreement, any Authorized Officer is further authorized to negotiate the principal amount of the Series 2008A Subordinated Notes to be sold pursuant to such Note Purchase Agreement up to the maximum aggregate amount set forth in Section 2 hereof, so long as the stated interest rate on the Series 2008A Subordinated Notes does not exceed the rates specified in Section 3 hereof.

Section 6. The City hereby authorizes the City Attorney to appoint Fulbright & Jaworski L.L.P., as Bond Counsel for the City in connection with the issuance of the Series 2008A Subordinated Notes. The City Attorney or his specified designee is further authorized to

pay the fees of Fulbright & Jaworski L.L.P. in an amount not to exceed \$90,000, in addition to an amount not to exceed \$3,500 for reasonable out-of-pocket expenses; provided, however, the fees payable to bond counsel shall be contingent upon the successful sale of the Series 2008A Subordinate Notes.

Section 7. The City hereby authorizes the City Attorney to appoint Hawkins Delafield & Wood LLP, as Disclosure Counsel for the City in connection with the issuance of the Series 2008A Subordinated Notes. The City Attorney or his specified designee is further authorized to pay the fees of Hawkins Delafield & Wood LLP in an amount not to exceed \$25,000, in addition to an amount not to exceed \$3,500 for reasonable out-of-pocket expenses, provided, however, the fees payable to disclosure counsel shall be contingent upon the closing of the transaction.

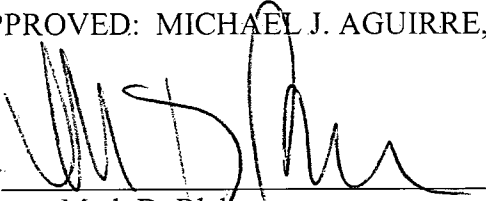
Section 8. All actions heretofore taken by any officials, employees or agents of the City with respect to the issuance, delivery or sale of the Series 2008A Subordinated Notes, or in connection with or related to any of the agreements referenced herein or the financing of the 2008A Components, are hereby approved, confirmed and ratified; and the officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate, carry out, give effect to and comply with the terms and intent of this Resolution and the consummation of the transactions contemplated hereby, including authorization to the Chief Financial Officer of the City to make all necessary budgetary and accounting adjustments to accomplish the above. The Authorized Officers of the City and their respective designees are each authorized and directed to take any related actions deemed necessary, advisable or appropriate to consummate and give effect to this Resolution. Any actions heretofore taken by

such officers in furtherance of any of the transactions authorized herein are hereby ratified, confirmed and approved.

Section 9. The City Council presently intends and reasonably expects to have the Series 2008A Subordinated Notes issued on its behalf within 18 months following the date of expenditure of moneys on the 2008A Components or the date upon which the 2008A Components are placed in service or abandoned, whichever is later (but in no event more than three years after the date the original expenditure of such moneys is made) and to allocate an amount up to \$10,000,000 of the proceeds thereof to the Reimbursable Expenditures in connection with the 2008A Components. All of the Reimbursable Expenditures covered by this Resolution were paid not earlier than sixty (60) days ^{3008.01.03} prior to the date of this Resolution. The City Council intends to allocate within 30 days after the date of issuance of the Series 2008A Subordinated Notes the proceeds therefrom to reimburse the City for the Reimbursable Expenditures.

Section 10. Effective Date. This Resolution shall take effect immediately upon its adoption.

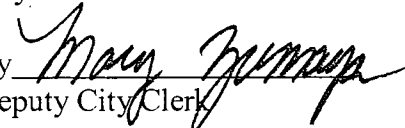
APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Mark D. Blake
Chief Deputy City Attorney

MDB:jdf
01/31/08
Or.Dept:Debt Management
R-2008-643

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of FEB 19 2008.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 2-20-08
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

68 FEB 19 2008
CITY CLERK

ASPEC 10

N/A

(R-2008-643)

Passed by the Council of the City of San Diego on February __, 2008, by the following vote:

YEAS:

NAYS:

NOT PRESENT:

RECUSED:

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 foregoing is a full, true and correct copy of
RESOLUTION NO. R-_____, 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