



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: February 28, 2008 REPORT NO. 08-031

ATTENTION: Council President and City Council  
Agenda of March 11, 2008

SUBJECT: Community Facilities District No. 3 (Liberty Station) Special Tax Bonds  
Series A of 2008

REFERENCE: Report to City Council No. 06-059, dated May 18, 2006  
Memorandum to Mayor and City Council, dated June 27, 2005, "Status  
Update on Proposed Issuance of Community Facilities District No. 3 (Liberty  
Station) Special Tax Bonds, Series A"  
Manager's Report No. 05-112, dated May 11, 2005  
Manager's Report No. 02-096 dated April 29, 2002

**REQUESTED ACTIONS:**

Authorize the issuance of Community Facilities District ("CFD") No. 3 Special Tax Bonds Series A of 2008 (the "2008 CFD Bonds") in a principal amount not to exceed \$4.25 million and the related financing documents to provide the remaining CFD bond funding for eligible district improvements, including Phase 2 of the Regional Park. The related financing documents include a Supplemental Indenture, a Bond Purchase Agreement, a Preliminary Official Statement, and a Continuing Disclosure Certificate. In addition, approve the First Amendment to Purchase and Finance Agreement.

**REQUESTED ACTIONS** – Approve the requested actions.

**SUMMARY:**

**I. BACKGROUND:**

The Mello-Roos Community Facilities Act of 1982 (the "Mello-Roos Act") was enacted by the State to help growing areas finance essential public facilities that typically accompany major development projects. The Mello-Roos Act specifically provides for the establishment of a CFD for the purpose of financing certain public improvements and/or services, and was amended to specifically facilitate military base reuse. The City's Council Policy 800-03, which was in effect at

the time Community Facilities District No. 3 (Liberty Station) (“the District”) was formed,<sup>1</sup> allows for utilization of CFDs to finance public facilities required in connection with development.

More particularly, the Disposition and Development Agreement or “DDA” between the Redevelopment Agency of the City (“Agency”) and McMillin-NTC, LLC (“McMillin”) for the development of the Naval Training Center Redevelopment Project (the “Redevelopment Project”) was approved by the City Council and the Agency in June of 2000 and gave McMillin the right to pursue CFD formation. The DDA states that the “Master Developer intends to finance the Development Cost of the Horizontal Improvements with a combination of debt (including, to the extent approved by the City, Community Facilities District bonds as described in paragraph c.(3) of Section 1.08 of this Agreement) and Master Developer’s equity.” Paragraph c.(3) of Section 1.08 of the DDA further states, the “Master Developer shall have the right to pursue formation of a Community Facilities District or other district in order to finance Horizontal Improvement Development Costs...” The DDA defines Horizontal Improvements as “public improvements and utilities...”, which includes road improvements. Also, in the DDA, “Park Improvements” is defined as Horizontal Improvements.

In accordance with the Mello-Roos Act, the Council Policy, and provisions of the DDA, and following public hearings and a special election conducted pursuant to the Mello-Roos Act, the City Council adopted the necessary resolutions to form the District in 2002. In addition, the City Council authorized the levy of special taxes (“Special Taxes”) on taxable property interests within the District and the issuance of bonds in an amount not to exceed \$30.0 million, which provides for the acquisition of eligible facilities, the required debt service reserve fund, and costs of formation and issuance.

The District was established to finance certain public facilities (the “Public Facilities”) required in connection with McMillin’s development of the Redevelopment Project. McMillin’s overall fiscal obligation with respect to public improvements required in connection with the Redevelopment Project is currently estimated by McMillin and the Redevelopment Agency to total \$122.8 million. In conformance with the DDA, the maximum amount of facilities to be funded through the District is approximately \$20.8 million.

The Public Facilities that are eligible to be financed through the District, and the terms of acquisition, are described in the Purchase and Finance Agreement (the “Acquisition Agreement”) between the City and McMillin. The Acquisition Agreement was approved by City Council in connection with the District formation proceedings in 2002. Following is the list of facilities included in the agreement.

- a. Rosecrans Street and Lytton Street improvements;
- b. improvements to Rosecrans Street and Nimitz Boulevard;
- c. improvements to Harbor Drive at Lee Street;
- d. construction of the 46-acre regional park required of McMillin pursuant to the terms of the DDA and related agreements, including demolition of existing structures; and

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<sup>1</sup> On November 6, 2007, the City Council passed a resolution to repeal Council Policy 800-03 and to approve a new Special Districts Formation and Financing Policy, which is included within the City’s Debt Policy. The resolution stated that the new Special Districts Formation and Financing Policy would apply only to CFDs and Assessment District formed after the effective date of the resolution. Therefore, in connection with the issuance of the proposed 2008 CFD Bonds, Council Policy 800-03 is still considered operative.

e. improvements to Laning Road.

The Special Taxes are levied in accordance with the rate and method of apportionments (the RMAs) approved in connection with the District formation proceedings. The Special Tax receipts may be used to pay either debt service on the CFD Bonds, or to directly fund the Public Facilities. At the time the District was formed, it was anticipated that tax-exempt bonds would be issued in two series.

The first series of bonds--Community Facilities District No. 3 (Liberty Station) Special Tax Bonds Series A of 2006 (the "2006 CFD Bonds")--was issued in July 2006. These bonds were privately placed because at that time the City's bond and disclosure counsel for the 2006 CFD Bonds and the City's general disclosure counsel had advised that, although the 2006 CFD Bonds were not obligations of the City, any material adverse information regarding the City's financial condition or any material adverse developments regarding the pending investigations being conducted by various governmental agencies could have a negative impact on the value of the bonds in the secondary market. Counsel further advised that until the City was in a position to provide current financial information to the marketplace and there was information regarding the outcome of the investigations, the CFD Bonds should not be publicly offered. The par amount of the 2006 CFD Bonds totaled \$16.0 million, and provided \$13.3 million in net acquisition proceeds. As more fully described below, the bond proceeds, in addition to certain Special Tax receipts, were used to acquire eligible road improvements and Phase 1 of the Regional Park. Remaining funds will be applied, along with proceeds of the proposed 2008 CFD Bonds, to the acquisition of Phase 2 of the Regional Park.

## **II. DISCUSSION**

### **A. Proposed Bond Issuance – Public Offering**

The Financing Team for the 2008 CFD Bonds is the same as the team for the 2006 CFD Bonds, and includes staff of the Department of Finance, including the Debt Management Department and the City Comptroller's Office, the City Attorney's Office, and outside consultants, including a financial advisor (Fieldman, Rolapp & Associates), a special tax consultant (David Taussig & Associates), bond and disclosure counsel (Stradling, Yocca, Carlson, & Rauth), the underwriters (Stone & Youngberg LLC and EJ De La Rosa & Co.), and the underwriter's counsel (Nossaman, Guthner, Knox & Elliott LLP).

The Financing Team and the City's general disclosure counsel (John McNally, with Hawkins Delafield & Wood LLP) have concluded that the 2008 CFD Bonds could be issued in a public offering due to various milestones reached by the City subsequent to the private placement of the 2006 CFD Bonds. The City has released its audited Comprehensive Annual Financial Reports ("CAFRs") for the fiscal years ended June 30, 2003 and June 30, 2004, and the release of the CAFR for the fiscal year ended June 30, 2005 is imminent (the 2005 CAFR is currently under review by the City's Audit Committee, after which it will be forwarded to the City Council to be reviewed and filed). The Kroll Investigation was completed in August of 2006, and the City entered into a cease-and-desist order with the Securities and Exchange Commission ("SEC") on November 14, 2006. In addition, the CFD Bonds are not fiscal obligations of the City and a City CAFR is not included in the official statement for the initial offering of the bonds. Thus, the Financing Team, including the disclosure counsel for the 2008 CFD Bonds and the City's general disclosure counsel, have

concluded these bonds could be issued as a public offering, with an official statement. This conclusion is based, in part, on the City’s representation that all material facts regarding the City’s current financial condition and the status of the investigations has been disclosed to counsel and properly described in the Official Statement.

**B. Method of Sale - Negotiated**

Due to the nature of the security for land secured bonds, such as the 2008 CFD Bonds, and because such bonds are typically non-rated, most land secured bond sales in the State of California utilize a negotiated sale method. CFD bonds are typically non-rated because they are usually not considered investment grade (BBB- or above) due to the fact that the bonds are secured solely by the Special Tax revenues (versus a General Fund pledge of a municipality), and are often issued while development is still occurring.

With a negotiated sale, the underwriter is selected early in the financing process and the terms and price of the bonds are negotiated with the issuer. The underwriter for the District (Stone & Youngberg LLC and EJ De La Rosa & Co., collectively, the “Underwriter”) was selected prior to District formation. As a member of the Financing Team, the Underwriter assists with structuring the financing, participates in the review of financing documents and the development of the disclosure documents (the preliminary official statement [“POS”] and the official statement [“OS”]). Also, with input from the City and its Financial Advisor, the Underwriter identifies appropriate investors, pre-markets the bonds, and schedules and conducts the bond sale.

Due to the factors described above (i.e., the nature of the security for the bonds, and the non-rated status of the bonds), it is prudent to use a negotiated sale method for the proposed 2008 CFD Bonds. The negotiated sale method would give the Underwriter adequate time to pre-market the 2008 CFD Bonds to appropriate investors, which should result in lower interest rates than if the bonds were sold on a competitive basis. Land secured bonds are not appropriate investments for all investors. The Underwriter has advised that it has controls in place to ensure that the bonds are purchased by appropriate investors who understand the special risks of land secured bonds such as the 2008 CFD Bonds, and that it will comply with all suitability requirements of the SEC and Municipal Securities Rulemaking Board.

**C. Issuance Size**

In 2002, City Council approved a \$30 million maximum overall bond authorization for the District to provide for the acquisition of eligible facilities (approximately \$20.8 million), the required debt service reserve fund, and costs of formation and issuance for one or more series of bonds. The actual amount of total bonds expected to be issued is less than \$20.0 million:

**District Bond Authorization and Total Expected Issuance Amount**

Total District Bond Authorization	\$30,000,000
Bond Issuance Amounts	
2006 CFD Bonds	\$16,000,000
Proposed 2008 CFD Bonds (est.)	<u>\$ 3,950,000</u>
Total Bonds Issued for District (est.)	\$19,950,000

The 2006 CFD Bonds totaled \$16.0 million and provided for certain road improvements, Phase 1 of the Regional Park, and a portion of funding for Phase 2 of the Regional Park. The proposed 2008 CFD Bonds would be considered parity bonds to the 2006 CFD Bonds, which means they would have the same priority with respect to the receipt and application of Special Taxes for repayment of debt service and the bonds would be governed by the indenture executed in connection with the 2006 CFD Bonds (the “Indenture”), as supplemented by the First Supplemental Bond Indenture (“Supplemental Indenture”). The proceeds of the 2008 CFD Bonds would provide for a deposit into the debt service reserve fund (“DSRF”) established under the Indenture to increase the DSRF to the new required level resulting from the issuance of the parity bonds, costs to issue the bonds, and proceeds to acquire Phase 2 of the Regional Park. The following table specifies the estimated sources and uses of proceeds of the 2008 CFD Bonds:

Sources and Uses of Bond Proceeds\*

<u>Estimated Sources:</u>	
Par Amount of 2008 CFD Bonds:	\$ 3,950,000
 <u>Estimated Uses:</u>	
Public Facilities/Acquisition Fund	\$3,190,000
Deposit to Debt Service Reserve Fund	280,000
Costs of Issuance**	480,000
 TOTAL:	 \$3,950,000

\* Preliminary; subject to change.

\*\* Costs of Issuance include legal fees, financial advisor and other consultant fees, Underwriter’s discount, staff costs, and other expenses related to the issuance of the bonds.

**D. Acquisition Funds**

The use of acquisition funds is guided by the DDA and the Acquisition Agreement (such Acquisition Agreement was approved by City Council in 2002 as part of the District formation actions). To date, facilities acquired through the District include improvements to Rosecrans Street and Harbor Drive. In addition, Phase 1 of the Regional Park was completed and acquired by the City in 2007. Phase 1 included 18 acres of active and passive turf areas, a children’s playground area, a comfort station, paved pedestrian walkways, parking lots, landscape and irrigation, park furnishings, half-width street improvements for perimeter streets, and costs for demolition required at the Park site. McMillin currently anticipates that Phase 2 of the Regional Park, which includes the balance of the 46 acre park with similar elements as Phase 1 (e.g., passive open turf and naturalized areas, comfort stations, paved pedestrian walkways, landscape and irrigation, park furnishings, benches, picnic tables, and trash receptacles), will be completed 16 months after the issuance of the 2008 CFD Bonds. This estimated completion period would conform to the accelerated time-frame set forth in the First Amendment to the NTC Park Improvement Agreement and would be ahead of the schedule established in the DDA.

Pursuant to the RMAs that were approved in connection with the formation proceedings, the City has levied Special Taxes on developed property within the District, beginning with the Fiscal Year

2004 tax year. Special Tax receipts may be used to pay directly for facilities or to pay debt service on bonds issued to fund facilities. The following table provides specific information on the facilities acquired to date and anticipated to be acquired with the 2006 CFD Bonds, the proposed 2008 CFD Bonds, and Special Tax receipts:

Sources and Uses of Acquisition Funds <sup>(1)</sup>

<u>Sources of Funds</u>	<u>Amount</u>	
FY 2004 Levy – Special Tax-Acquisition Receipts	\$381,024	
FY 2005 Levy – Special Tax-Acquisition Receipts	\$951,207	
FY 2006 Levy – Special Tax-Acquisition Receipts	\$1,339,732	
FYs 2007 & 2008 Levy–Special Tax-Acquisition Receipts (Est.)	\$412,222	
2006 CFD Bonds (Deposit to Acquisition Fund)	\$13,278,429	
Interest Earnings on 2006 CFD Bonds (Est.)	\$761,816	
2008 CFD Bonds (Deposit to Acquisition Fund) (Est.)	\$3,188,644	
Total	\$20,313,074	(1)
<u>Uses of Funds</u>		
Rosecrans/Lytton Street Improvements (Actual)	\$5,101,770	(2)
Harbor Drive Street Improvements (Actual)	\$888,411	(2)
Regional Park- Phase 1 (Actual)	\$8,736,504	(3)
Regional Park - Phase 2 - Remaining Balance (Est.)	\$5,576,570	(3)
Remaining Road Improvements (Est.)	\$9,819	(2)
Total	\$20,313,074	(1)

- (1) The DDA cap for facilities to be provided through the District is approximately \$20.8 million; however, \$466,726 of this amount represents a contribution to an aquatic center and has not been included in the table, or in the proposed 2008 CFD Bond issuance. (also see footnote 3).
- (2) Pursuant to the DDA, the cap for CFD funding for road improvements is \$6,000,000.
- (3) Pursuant to the DDA, the cap for CFD funding for the Regional Park Improvement is \$14,779,800. However, as a result of City Council action in 2003 in connection with the General Development Plan for the NTC Park, Phase 2 of the Regional Park includes \$466,726 in funding for the aquatic center contemplated in the General Development Plan for the NTC Park. The Park and Recreation Department estimates that the total cost of the aquatic center would be approximately \$13 million and no other funding for construction of the project has been identified. As such, this element of the Regional Park is not included in the proposed bond issuance. However, because the \$466,726 contribution is an eligible expense of the District, the City may elect to utilize Special Tax levy receipts, if available, to provide for this contribution in the future if the remaining funding for construction of the aquatic center is identified.

**Operations and Maintenance Costs – Phase 2 of Park**

In connection with this item, the Park and Recreation Department is issuing a separate Report to City Council outlining the estimated operations and maintenance costs associated with Phase 2 of the Regional Park. McMillin expects to complete Phase 2 within 16 months of the proposed bond sale, and thus the Park should be operational in early Fiscal Year 2010.

## **E. Repayment of the Bonds – Special Taxes**

Debt service on the 2008 CFD Bonds would be payable with Special Taxes levied on taxable property interests within the District over the term of the bonds, in accordance with the RMA's approved by the City Council in 2002. The bonds are not general or special obligations of the City, and are not backed by the faith, credit, nor the taxing power of the City. The 2008 CFD Bonds are special limited obligations of the District payable solely from Special Taxes collected from owners of taxable property interests within the District.

Under the existing Indenture, when the parity bonds (the 2008 CFD Bonds) are issued, the Special Taxes that may be levied in each Fiscal Year must not be less than 110% of the combined debt service for the 2006 and 2008 CFD Bonds. Debt service coverage of approximately 126% is currently estimated, based on the development status of the land within the District as of January 2, 2008.

If there is a shortfall in the amount of Special Taxes available to make a debt service payment, monies would be withdrawn by the Trustee from the DSRF. The DSRF is established when the bonds are issued and is generally sized in an amount equivalent to the maximum annual debt service on the bonds. In this case, because the 2008 CFD Bonds are parity bonds to the 2006 CFD Bonds, there will be a deposit into the existing DSRF to increase the reserve to the new required level based on the incremental debt service resulting from the issuance of the 2008 CFD Bonds. In addition, the District has provided a covenant in the Indenture wherein it would diligently pursue foreclosure on property delinquent in the payment of Special Taxes if certain delinquency thresholds are reached.

The RMAs specify that Special Taxes will be levied at the Assigned Special Tax Rate (the "Assigned Rate") set forth in the RMA's until: (1) all authorized bonds of the District have been issued (\$30 million) or the City Council has covenanted that no additional bonds will be issued (other than refunding bonds), and (2) all facilities eligible for reimbursement have been acquired. Once the proposed 2008 CFD Bonds are issued, sufficient funds would be available to acquire eligible facilities included in the Acquisition Agreement up to the maximum amounts contemplated in the DDA. As such, the Financing Resolution includes a City Council declaration that no more bonds will be issued in connection with the District other than refunding bonds. This could benefit the Special Taxpayers in the District because it would enable the City to levy Special Taxes at less than the Assigned Rate if the revenues generated would be sufficient to make principal and interest payments on the bonds, replenish shortfalls, if any, in the DSRF, and pay administrative costs of the District.

### **Amendment to Acquisition Agreement**

To facilitate the possibility of levying Special Taxes at less than the Assigned Rate as early as possible, a companion resolution has been prepared that would authorize an amendment to the Acquisition Agreement (the First Amendment to Purchase and Finance Agreement). The amendment provides that Phase 2 of the Regional Park would have the highest priority of the facilities that have not yet been acquired, and provides that once the DDA caps are reached with respect to CFD funding for eligible facilities, all facilities shall be deemed to have been acquired for purposes of the RMAs, at which point the RMA condition for levying less than the Assigned Rate only after all facilities have been acquired would be met. (See Sources and Uses of Acquisition Funds table, above, for list of facilities that have been, or will be, acquired.)

## **F. Value to Lien Ratio**

When forming the District, the City required a 4 to 1 value-to-lien ratio for property within the District subject to the Special Tax. This ratio is higher than the minimum ratio (3 to 1) required by the Mello-Roos Act and the Council Policy in effect at the time the District was formed. The value-to-lien ratio is an important factor in evaluating the credit-worthiness of a land secured transaction. It represents the value of the property upon which Special Taxes are levied within the District as compared to the amount of bonds outstanding supported by the Special Taxes, and any other special taxes or assessments levied on the property. Requiring a higher value-to-lien ratio reduces the risk that a property owner would become unwilling to pay the Special Taxes when due, and increases the likelihood that if foreclosure proceedings became necessary due to a delinquency in the payment of Special Taxes, the proceedings would result in sufficient proceeds to recover the delinquent taxes. Due to the fact that these bonds are being issued at a time when significant portions of the District have already been developed and sold to end users (e.g., residential homeowners), the estimated assessed value-to-lien ratio for these bonds, based on development status of January 2, 2008, is approximately 15 to 1.

## **G. Pricing of the 2008 CFD Bonds**

Under market conditions as of January 9, 2008, the estimated True Interest Cost ("TIC") and average coupon rate on the 2008 CFD Bonds are approximately 6.95% and 5.73%, respectively; the estimated annual debt service payment would be approximately \$282,000. (The maximum TIC established in the financing resolution is 7.75%. It is not currently expected that the actual pricing will result in a TIC of 7.75%, however, should that occur, the annual debt service payment would be approximately \$306,000.) The TIC is a measure of the interest cost of an issue that accounts for the interest rates on the bonds, the time value of money, and the costs of issuance. It is distinguished from the coupon rate that is paid to the bondholders. The estimated TIC for the 2008 CFD Bonds is relatively high due to the small size of the issuance. Certain costs of issuance are generally fixed regardless of the size of the bonds, and therefore have a more significant impact to the overall cost of financing for a smaller issuance, as reflected in the TIC. The term of the bonds is 28 years (the final maturity on the 2008 CFD Bonds would be 2036, which is the same as the maturity on the 2006 CFD Bonds).

Land based securities, such as the 2008 CFD Bonds, are usually not rated and are generally considered more risky than securities backed by a governmental entity such as the City. As a result, they command a higher rate of interest than rated bonds that are obligations of a governmental entity. The estimated pricing is based on market conditions for non-rated land secured financings in the State as of January 9, 2008. This particular bond market segment has experienced widening credit spreads relative to more highly rated municipal bonds as well as volatile investor demand in the third and fourth quarters of 2007, due to concerns about the real estate market and the sub-prime mortgage issue. Conditions that exist at the time of the bond sale may be different. The actual pricing will be determined at the time of the sale, and will be dependent upon market conditions that exist at that time.

## **H. The Financing Team**

The Underwriter was selected through a competitive process. A Request for Proposals ("RFP") was issued in April of 2001 to solicit proposals from underwriters for the negotiated sale of bonds issued



by the District in one or more series. The outcome of this process was to select Stone & Youngberg LLC as the senior managing underwriter and EJ De La Rosa & Co. as co-manager based on the firms' qualifications. This same team underwrote the 2006 CFD Bonds.

Pursuant to Council Policy 900-09, Stone & Youngberg has submitted information relating to Community Reinvestment Activities ("CRA"). It is understood that Stone & Youngberg is not a commercial bank and is not subject to the CRA provisions. However, Stone & Youngberg has voluntarily provided information on its community activities at the City's request. This information is provided under Attachment 1.

The Financial Advisor (Fieldman, Rolapp & Associates), Special Tax Consultant (David Taussig & Associates), and Bond and Disclosure Counsel (Stradling, Yocca, Carlson and Rauth) were also selected prior to the 2002 formation of the District. The City Council passed an Ordinance on September 4, 2007 approving contracts for these consultants to perform services related to the issuance of the 2008 CFD Bonds.

## **I. The Financing Documents**

The financing documents that the City Council would approve through the proposed actions include the forms of Supplemental Indenture, a Bond Purchase Agreement, a Continuing Disclosure Certificate, and a POS.

- a. Financing Resolution – The Financing Resolution authorizes the issuance of the 2008 CFD Bonds, provides for the approval of the financing documents (described below), and delegates to the Mayor and his designees authority to take actions to issue the 2008 CFD Bonds.
- b. The Supplemental Indenture – The First Supplemental Bond Indenture ("Supplemental Indenture") is an agreement between the District and the existing Trustee for the District, Wells Fargo Bank, N.A. to supplement the existing Indenture. The Supplemental Indenture outlines the District's and the Trustee's responsibilities and obligations and the rights of the bondholders with respect to the 2008 CFD Bonds, and pledges Special Taxes levied within the District to repay the bonds.

The Supplemental Indenture includes information regarding the amount of the bonds, maturities and interest rates on the bonds, and the nature of the bonds (i.e., that the bonds are not obligations of the City, and are limited obligations of the District). The Indenture, as supplemented by the Supplemental Indenture, provides that the Trustee will establish and maintain certain funds, accounts, and sub-accounts, specifies how any funds (e.g., DSRF monies) are to be invested, and how the DSRF is to be utilized. It also specifies the covenants of the District including that it will: cause the principal and interest on the bonds to be paid punctually to the extent Special Tax receipts are available; levy Special Taxes sufficient to pay principal and interest on the bonds up to the maximum rate prescribed by the RMA's; and commence foreclosure proceedings against any delinquent parcel if certain delinquency thresholds are reached.

The Supplemental Indenture also specifically waives certain provisions in the Indenture pertaining to resale restrictions on the 2006 CFD Bonds. These provisions were established

in connection with the private placement structure of the 2006 CFD Bonds and limited the number of investors who could hold the bonds and the minimum denominations of such bonds, and required execution of an Investor Letter upon resale, which, among other things, required investors to acknowledge that there was no District disclosure document. The underwriters have advised the City that a waiver of the transfer restrictions will be viewed positively by the current investors and will promote positive relations between the City and the investors who are potential purchasers of debt issued by the City or its subordinate entities in the future. Due to the conclusion that current circumstances permit the 2008 CFD Bonds to be issued as a public offering and the fact that a POS will be provided in connection with such bonds, it is reasonable for the District to waive the re-sale restrictions for the 2006 CFD Bonds, and such waiver has been incorporated into the Supplemental Indenture. The District is not obligated to waive the provisions, however, and that decision remains in the sole discretion of the District. The City Attorney, bond counsel, and the City's general disclosure counsel have recommended that if the District elects to waive the transfer restrictions then the existing owners of the 2006 CFD Bonds should be required to agree with the District that as a condition of the first transfer of the 2006 CFD Bonds they will deliver to the purchasers a copy of the most recent disclosure document available for the District. Accordingly, this requirement has been incorporated into the Supplemental Indenture.

- c. The Bond Purchase Agreement – The Bond Purchase Agreement is an agreement between the District and the Underwriter, pursuant to which the District agrees to sell, and the Underwriter agrees to buy, the 2008 CFD Bonds. It specifies the purchase price for the bonds, and certain terms of the bonds, such as interest rates and maturities. In addition, it specifies the circumstances under which the Underwriter may cancel its obligation to purchase the issue, such as changes in the tax treatment of the bonds, and other events (e.g., a national or international crisis that impacts the national financial markets) that would make it substantially more difficult for the Underwriter to place the bonds with investors.

The agreement also specifies documents that the Underwriter and the District must receive prior to the closing of the bond offering. These documents include the Bond Counsel opinion regarding the validity of the 2008 CFD Bonds and the Supplemental Indenture, and an opinion on the tax exempt nature of the bond. Also, certain opinions and certificates of the City Attorney and other City and District officials are required. Such opinions and certificates, among other things, would confirm that all the steps necessary to authorize the execution of the financing documents and the issuance of the bonds have been properly taken.

- d. The Preliminary Official Statement (POS) – The POS describes the bond issue to the marketplace. It provides information that a reasonable investor in these types of securities would need to make an informed investment decision. Specifically, the POS for the 2008 CFD Bonds includes information about the bonds, sources of repayment of the bonds, the District, and the development and property ownership.

The POS also includes information on risk factors. Land based securities are generally considered more risky than securities backed by a governmental entity such as the City. For example, a downturn in the economy or a natural disaster could result in a reduction in property values and could adversely affect the ability or willingness of property owners to

pay the Special Taxes, which are the security for repayment of the bonds. The risk factors section of the POS provides a discussion of certain risk factors that should be considered by potential investors in the 2008 CFD Bonds.

Appendices to the POS include: copies of the previously authorized RMAs (Appendix A); supplemental economic information relating to the City (Appendix B); a summary of the Indenture (Appendix C); the Continuing Disclosure Certificate of the District (Appendix D); the Continuing Disclosure Agreement of the Developer (Appendix E); the form of Bond Counsel Opinion (Appendix F); information concerning the Depository Trust Company's book entry only system (Appendix G); and a copy of the report prepared by Empire Economics, Inc. on Recent Housing Price Trends/Patterns and Mortgage Loan Characteristics – CFD No. 3 (Appendix H). City CAFRs are not included in the POS. Since the bonds would not be repaid using any City revenues, it would not be necessary or appropriate to provide City CAFRs.

- e. The Continuing Disclosure Certificate – The Continuing Disclosure Certificate (the “CDC”) is included in the POS, and is a commitment by the District to submit certain information related to the bonds and the District annually to the national information repositories. Such information includes the balance in each fund held by the trustee, including the DSRF, and an annual update of the special tax delinquency table provided in the POS. In addition, although a City CAFR is not required or expected for the initial offering and is therefore not included with the POS, SEC rules do require a City CAFR to be filed annually with the bond and District information. The first annual report for the District would be due April 1, 2009.

#### **J. Schedule**

The Disclosure Practices Working Group reviewed the proposed financing and the POS on February 19, 2008 and February 20, 2008. Should the City Council approve the Financing Resolution and related financing documents for the 2008 CFD Bonds, it is anticipated that the bonds would be sold the week of March 24, 2008. The bond closing (receipt of bond proceeds) would occur the week of April 7, 2008.

#### **III. ALTERNATIVES:**

Do not approve the resolution to initiate the sale and delivery of 2008 CFD Bonds. If the issuance of the bonds is not approved, McMillin has indicated that it could not accelerate the time-frame set forth in the DDA for completion of Phase 2 of the Park. The DDA time-frame is significantly longer than the period established in the First Amendment to NTC Park Agreement (16 months after the issuance of the bonds).

#### **IV. FISCAL CONSIDERATIONS:**

There is no fiscal impact to the City. In accordance with Council Policy 800-03, all costs related to the 2008 CFD Bonds have been funded by McMillin and/or will be reimbursed with bond proceeds. The costs related to issuing and paying debt service on the bonds will ultimately be borne by property owners within the District, via the collection of the Special Taxes.

**V. PREVIOUS CITY COUNCIL ACTIONS:**

The City Council previously approved actions relating to the formation of the District and the 2006 CFD Bonds. These actions include the adoption of resolutions stating the City Council’s intent to establish the District, to authorize the levy of Special Taxes, and to have the District incur bonded indebtedness (Resolution Nos. R-296472 and R-296473, adopted May 7, 2002). On June 25, 2002, elections and a public hearing occurred and the City Council adopted resolutions and an Ordinance to form the District, authorize the levy of Special Taxes, and to have the District incur bonded indebtedness (Resolution Nos. R-296710, R-296742, R-296743, Ordinance No. O-19078). On April 5, 2005, the City Council took action directing the City Manager, the City Attorney, and the remainder of the Financing Team to bring back the financing documents for a first series of bonds to the City Council by May 17, 2005. On May 24, 2005, following the City Council’s deferral of the financing item from the May 17, 2005 City Council Meeting agenda, the City Council authorized the issuance of the 2006 CFD Bonds (Resolution No. R-300482).

**VI. COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

There were no community participation or outreach efforts for this item.

**VII. KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

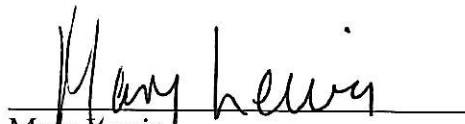
Key stakeholders include McMillin and the Agency; it is understood that the issuance of the bonds would implement an element of the DDA between these two parties. Other stakeholders include the special taxpayers in CFD No. 3.

Business entities involved in the transaction are: Stone & Youngberg LLC and EJ De La Rosa & Co. (the Underwriter); Nossaman, Guthner, Knox & Elliott LLP (Underwriter’s counsel); Stradling, Yocca, Carlson and Rauth (bond and disclosure counsel for the transaction); Fieldman, Rolapp & Associates (financial advisor); David Taussig & Associates (Special Tax Consultant); Wells Fargo Bank, N.A. (Trustee); and Empire Economics, Inc. (Price Trends and Mortgage Study Consultant).

Respectfully submitted,



Lakshmi Kommi  
Debt Management Director



Mary Lewis  
Chief Financial Officer

Attachment: Community Reinvestment Act Information provide by Stone & Youngberg LLC