

MEMORANDUM

TO: Governing Board Members

FROM: Paul E. Dumars, Sr., Chief Financial Officer, Executive Office

DATE: November 5, 2008

SUBJECT: Resolution Supplementing Resolution 2008-1027 – River of Grass Acquisition

Background

The Governing Board previously adopted Resolution No. 2008-1027 at its October meeting which approved bond financing for the potential River of Grass acquisition from United States Sugar Company. A copy of that resolution is attached. At past governing board meetings, when the board discussed the potential acquisition of U.S. Sugar assets, several board members expressed a desire to structure the transaction so that the District would acquire only the real estate and not the business assets of the company. In order to preserve this option, staff has drafted the attached resolution for consideration by the board that permits this structure. The previous resolution adopted by the board in October, 2008 authorizing the financing of this potential transaction only authorized the district's purchase of all of the assets of the company including both real and personal property. The attached resolution supplements the prior resolution and allows the District to pursue either option of acquiring only the real estate assets or acquiring both real property and business assets.

How this helps meet the District's 10-Year Strategic Plan:

The review and approval of the attached Resolution will enable the District to have options regarding negotiations and financing of the potential River of Grass acquisition.

Funding Source:

The funding source for the potential acquisition has not changed from the source that was approved in Resolution No. 2008-1027.

This Board item impacts what areas of the District, both resource areas and geography:

This item will impact the entire the entire District

What concerns could this Board item raise?

As with the review and approval of any major financial undertaking and associated legal documents, the Governing Board should consult with their General Counsel, Bond Counsel, Executive office, Office of Counsel, Financial Advisor, and Chief Financial Officer to ensure their understanding of the complexities, long-term financial implications, liabilities, and underlying risks associated with approval of the proposed resolution.

Why should the Governing Board approve this item?

Approving the attached resolution allows the District to have flexibility in its negotiations with US Sugar and to finance a transaction determined to be in the best interest of the public.

RESOLUTION NO. 2008- 1027

A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AUTHORIZING THE LEASE-PURCHASE FINANCING AND REFINANCING OF THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE DISTRICT'S CAPITAL PROJECTS, PROGRAMS AND WORKS, INCLUDING THE ACQUISITION OF THE ASSETS OF UNITED STATES SUGAR CORPORATION, IN THE MANNER DESCRIBED HEREIN; APPROVING THE FORMS OF A MASTER LEASE PURCHASE AGREEMENT, MASTER TRUST AGREEMENT, ASSIGNMENT AGREEMENT AND GROUND LEASE AGREEMENT IN SUBSTANTIALLY THE FORMS ATTACHED HERETO; AUTHORIZING THE COMMENCEMENT OF JUDICIAL VALIDATION PROCEEDINGS WITH RESPECT TO THE MASTER LEASE PURCHASE PROGRAM AND THE ISSUANCE OF CERTIFICATES OF PARTICIPATION RELATED THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 373.0831, Florida Statutes the Florida Legislature found that the proper role of water management districts in water supply is primarily planning and water resource development; and

WHEREAS, pursuant to Section 373.0831 (2) Florida Statutes, it was the intent of the Florida Legislature that water management districts, which includes the South Florida Water Management District (the "District"), take the lead in identifying and implementing water resource development projects and be responsible for securing funding for regionally significant water resource development projects as such term is defined in Section 373.019, Florida Statutes; and

WHEREAS, the District contemplates establishing a master lease purchase program (the "Lease Purchase Program") in order to finance and refinance certain capital projects, programs and works through the issuance of both fixed rate and variable rate certificates of participation ("Certificates") evidencing undivided proportionate interests in basic lease payments, which the South Florida Water Management District, as Lessee, will make pursuant to the Master Lease Purchase Agreement, to be issued in one or more series pursuant to Section 373.584, Florida Statutes, and all other applicable provisions of law, including, particularly, all powers and authority of municipalities to issue bonds under state law (collectively, the "Act"); and

WHEREAS, Section 373.093, Florida Statutes, empowers the Governing Board of the District to lease any lands or interest in land, including but not limited to oil and mineral rights, to which the District has acquired title, or to which it may acquire title, as long as the

40 lease is consistent with the purposes for which the lands or any interest in land was acquired;
41 and

42 **WHEREAS**, the Governing Board is or shall be the owner of certain real property
43 located within and outside its boundaries upon which the capital projects, programs or works
44 may be located (which, together with all structures and improvements now or hereafter
45 erected or situated thereon, and all fixtures, additions, extensions, alterations or replacements
46 thereto, now or hereafter located in, or used in connection with or attached or made to such
47 land, to the extent title thereto may vest in the Governing Board, is hereinafter referred to as a
48 "Facility Sites"); and

49 **WHEREAS**, it is in the best interest of the District for the Governing Board to authorize
50 a Master Lease Purchase Agreement and certain documents related thereto to lease purchase
51 Facility Sites and certain improvements, and the equipment, fixtures and structures on the
52 Facility Sites related to the District's capital projects, programs or works (the "Facilities") and to
53 lease back the improved Facility Sites; and

54 **WHEREAS**, in connection with an earlier lease purchasing program of the District, the
55 District authorized the formation of a not-for-profit corporation known as the "South Florida
56 Water Management Leasing Corp." (the "Corporation"); and

57 **WHEREAS**, Facilities may be lease-purchased from time to time pursuant to schedules
58 attached to the Master Lease Purchase Agreement (individually, "Schedule") pursuant to the
59 Act; and

60 **WHEREAS**, each such Schedule upon execution and delivery by the Governing Board
61 and the Corporation, together with the provisions of the Master Lease Purchase Agreement,
62 shall constitute a separate lease agreement (a "Lease"); and

63 **WHEREAS**, the Governing Board, as lessor, and the Corporation, as lessee, may enter
64 into one or more ground leases with respect to Facility Sites (the "Ground Lease") in connection
65 with the lease-purchase financing or refinancing of the Facility Sites and Facilities as set forth
66 on a particular Lease; each Facility Site and Facilities will be subleased back to the Governing
67 Board under the Master Lease Purchase Agreement; and

68 **WHEREAS**, pursuant to one of more assignment agreements, the Corporation shall
69 assign to the Trustee (referenced below) for the benefit of the holders of Certificates all of the
70 Corporation's right, title and interest in and to a Ground Lease and the Lease or Leases created
71 by one or more particular Schedules, including its right to receive basic lease payments under
72 such Lease or Leases;

73 **WHEREAS**, at the direction of the Governing Board, the Corporation shall provide for
74 the payment of the cost of acquiring Facility Sites and acquiring, constructing and installing
75 Facilities from time to time by entering into a Master Trust Agreement with a trustee (the
76 "Trustee"), pursuant to which the Corporation shall (a) establish a trust and assign to the

77 Trustee all of said Corporation's right, title and interest in and to the Master Lease Purchase
78 Agreement and all schedules thereto, direct the Trustee to execute and deliver to the
79 purchasers from time to time, series of Certificates, representing undivided proportionate
80 interests in the right to receive the basic lease payments to be made by the Governing Board
81 pursuant to each Lease relating thereto and deposit the proceeds of each series of Certificates
82 with the Trustee and direct the Trustee to hold the proceeds of the sale of such Certificates in
83 trust to pay the costs of acquiring, constructing and installing the Facilities; and

84 **WHEREAS**, the District has previously identified the restoration, protection and
85 preserving the Everglades ecosystem as a priority water resource development program which
86 includes the implementation of comprehensive management solutions for addressing issues of
87 water quality, water quantity, hydro period and maintaining flood protection; and

88 **WHEREAS**, as part of its water resource development program related to the
89 Everglades ecosystem which is known as the "River of Grass Acquisition Project," the
90 Governing Board contemplates entering into a Purchase and Sale Agreement related to the
91 purchase of all of the assets of United States Sugar Corporation and certain related entities
92 (collectively, "US Sugar") in order to acquire certain lands that will substantially alter the
93 manner and approach to restoring, protecting and preserving the Everglades ecosystem; and

94 **WHEREAS**, undertaking the acquisition of the assets in US Sugar as part of the River of
95 Grass Acquisition Project, which will constitute Facility Sites and/or Facilities, will serve a
96 public purpose by increasing the water storage capability of the District to reduce harmful
97 freshwater discharges from Lake Okeechobee to Florida's coastal rivers and estuaries;
98 improving the timing and quality of delivery of cleaner water to the Everglades ecosystem;
99 preventing phosphorus from entering the Everglades ecosystem; eliminating the need for "back-
100 pumping" water into Lake Okeechobee and improving the sustainability of agriculture and
101 green energy production all as more particularly described in staff report entitled Summary of
102 Benefits of the USSC Land Acquisition attached hereto as Exhibit A (the "Report"); and

103 **WHEREAS**, the purchase of the assets of US Sugar may include the purchase of the fee
104 simple interest in the land and improvements or the acquisition of a future interest in the land
105 and improvements, some of which may lie outside the jurisdictional boundaries of the District,
106 and include the authority to lease or lease back a portion to the assets acquired from US Sugar
107 to unrelated third parties which may include US Sugar; and

108 **WHEREAS**, US Sugar is unwilling to sell any assets without the District purchasing
109 substantially all of the assets of U.S. Sugar; and

110 **WHEREAS**, the purchase of the assets of US Sugar will include certain land and
111 improvements that are not needed for the public purpose of restoring, protecting and
112 preserving the Everglades ecosystem as part of the River of Grass Acquisition Project and the
113 District will diligently pursue the sale of all assets and land not otherwise needed for such
114 public purpose; and

115 **WHEREAS**, the Governing Board desires to finance the purchase price due pursuant to
116 Purchase and Sale Agreement with US Sugar and the future construction, installation and
117 acquisition of Facilities to be located on the lands currently owned by the District and hereafter
118 acquired by the District, including a portion of the lands to be acquired from US Sugar,
119 through the issuance of one or more Series of Certificate of Participation under its Lease
120 Purchase Program; and

121 **WHEREAS**, the Governing Board desires to authorize the judicial validation of the
122 certificates of participation financing pursuant to Sections 75.01 and 373.583, Florida Statutes.

123 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE**
124 **SOUTH FLORIDA WATER MANAGEMENT DISTRICT, FLORIDA**, as follows:

125 **SECTION 1. Recitals.** The recitals set forth above are adopted by the Governing
126 Board as the findings of the District and are incorporated herein.

127 **SECTION 2. Authority for this Resolution.** This Resolution is adopted pursuant to
128 the provisions of the Act.

129 **SECTION 3. Authorization of Certificates of Participation Lease-Purchase Financing.**
130 Subject and pursuant to the provisions of the Act, the Governing Board hereby authorizes
131 certificates of participation lease-purchase financing (the "Lease Purchase Program") to provide funding
132 for its capital projects, programs and works as identified from time to time by the Governing Board.
133 The aggregate principal amount of Certificates authorized hereunder pursuant to the Lease
134 Purchase Program shall not be limited; provided, however the District initially authorizes the
135 issuance of not to exceed \$2,200,000,000 aggregate principal amount of Certificates pursuant to its
136 Lease Purchase Program. The Certificates shall be issued from time to time in one or more
137 series, each series in an aggregate principal amount to be determined by subsequent resolution
138 or resolutions of the District and to be designated "Certificates of Participation, Series ____
139 Evidencing an Undivided Proportionate Interest of the Registered Owners thereof in Basic
140 Lease Payments to be Made by the Governing Board of the South Florida Water Management
141 District, as Lessee, Pursuant to a Master Lease Purchase Agreement with South Florida Water
142 Management Leasing Corp., as Lessor." The Certificates may be issued as either fixed rate or variable
143 rate Certificates as determined by subsequent resolution. The District may enter into interest rate
144 hedging agreements to provide, among other things, a hedge related to the Certificates issued with a
145 variable rate of interest as determined by subsequent resolution. Each series of Certificates shall be
146 authorized by the Corporation, at the request of the Governing Board, and executed and delivered by
147 a Trustee for such purposes which include, but are not limited to: (a) financing or refinancing the cost
148 of construction and equipping of any Facilities, including the acquisition of Facility Sites, (b) financing
149 or refinancing the cost of completing the construction, installation and equipping of any Facilities, (c)
150 financing or refinancing the cost of increasing, improving, modifying, expanding or replacing any
151 Facilities, (d) paying or providing for the payment of the principal portion and interest portion of
152 the basic lease payments with respect to, all or a portion of the Facilities financed from the
153 proceeds of any series of Certificates theretofore executed and delivered, (e) funding any necessary

154 reserve account, (f) capitalizing the interest portion of basic lease payments during construction, (g)
155 paying the costs of issuance applicable thereto and (h) paying sums due under any interest rate
156 hedging agreements.

157 **SECTION 4. Authorization of Execution and Delivery of Master Lease Purchase**
158 **Agreement.** The District does hereby authorize the Chair or Vice-Chair to execute and deliver a
159 Master Lease Purchase Agreement (the "Master Lease") in connection with the Lease Purchase
160 Program, between the District and the Corporation for the purpose of, pursuant to separate and
161 distinct schedules, the form of which is attached to the Master Lease, lease purchasing certain
162 improvements, equipment, fixtures and structures from time to time related to the District's capital
163 projects, programs and works and subleasing back the Facility Sites. The Master Lease, in
164 substantially the form thereof attached hereto and marked **Exhibit "B"** is hereby approved, with
165 such changes as the Chair or Vice-Chair deems necessary and approves when executing the same,
166 with such execution to constitute conclusive evidence of such officer's approval and the District's
167 approval of any changes therein from the form of Master Lease attached hereto.

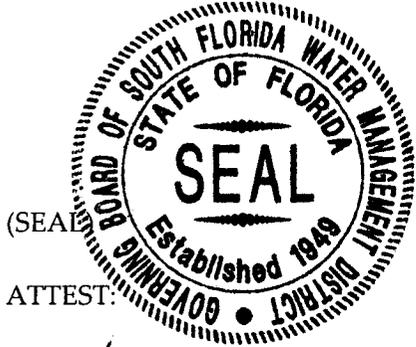
168 **SECTION 5. Approval of a Master Trust Agreement.** The District does hereby
169 approve the form of a Master Trust Agreement (the "Master Trust Agreement") for the Lease
170 Purchase Program, between the Corporation and the Trustee. The Master Trust Agreement
171 shall provide for the security of the Certificates and express the contract, from time to time
172 pursuant to a supplemental trust agreement, between the Corporation and the owners of such
173 Certificates. The Master Trust Agreement, in substantially the form thereof attached hereto and
174 marked **Exhibit "C"**, with such changes therein as are necessary or desirable to reflect the terms
175 of the sale of the Certificates. The execution and delivery of the Master Trust Agreement by the
176 Corporation and the Trustee shall constitute conclusive evidence of the approval thereof.

177 **SECTION 6. Authorization of the Form of Ground Lease Agreement.** The District
178 does hereby approve the form of a Ground Lease Agreement between the Governing Board, as
179 lessor, and the Corporation, as lessee, which form may be executed from time to time with
180 respect to one or more Facilities in substantially the form attached hereto and marked **Exhibit**
181 **"D"**, with such changes therein as are necessary as shall be approved by the Chair or Vice Chair
182 executing the same, with such execution to constitute conclusive evidence of such officer's approval
183 and the District's approval of any changes therein from the form of Ground Lease attached hereto.

184 **SECTION 7. Approval of Form of Assignment Agreement.** The District does hereby
185 approve the form of an Assignment Agreement (the "Assignment Agreement") between the
186 Corporation and the Trustee whereby the Corporation shall assign to the Trustee all of its right,
187 title and interest in and to a Ground Lease and the Lease or Leases created by one or more particular
188 Schedules, including its right to receive basic lease payments under such Lease or Leases. The
189 Assignment Agreement shall be in substantially the form thereof attached hereto and marked
190 **Exhibit "E"**, with such changes therein as are necessary or desirable. The execution and delivery
191 of the Assignment Agreement by the Corporation and the Trustee shall constitute conclusive
192 evidence of the approval thereof.

PASSED AND ADOPTED this 9th day of October, 2008.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
By its Governing Board



Jackie McGarty
Secretary

Chair

Legal Form Approved:
SOUTH FLORIDA WATER MANAGEMENT
DISTRICT
Office of General Counsel

By: *M. S. B. [Signature]*

Date: October 9, 2008