

RESOLUTION NUMBER FA-2002-5  
ADOPTED ON NOVEMBER 29, 2001

A RESOLUTION OF THE PUBLIC FACILITIES OF THE CITY OF SAN DIEGO APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE OFFERING DOCUMENT (IN PRELIMINARY AND FINAL FORM), AN AMENDED AND RESTATED CONTRACT OF PURCHASE, AND A CONTINUING DISCLOSURE AGREEMENT RELATING TO THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO LEASE REVENUE BONDS, SERIES 2001 (BALLPARK PROJECT) AND APPROVING OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, on November 3, 1998, the electorate of the City of San Diego [City] approved Ordinance No. O-18613 [1998 Ordinance] which authorized and directed the City to enter into the Memorandum of Understanding Concerning a Ballpark District, Construction of a Baseball Park, and a Redevelopment Project [MOU], within the Centre City East [East Village] Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project between the City, Redevelopment Agency of the City [Redevelopment Agency], the Centre City Development Corporation and Padres L.P. [collectively, "Parties"]; and

WHEREAS, the 1998 Ordinance provided that it was the intent of the electorate that the 1998 Ordinance and the MOU constitute the legislative acts establishing policy for the City on those matters, and provided for the ways and means for the implementation of that policy by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent of the 1998 Ordinance; and

WHEREAS, the MOU has been executed by all Parties; and

WHEREAS, section XXXIII.A.1 of the MOU provides that a condition subsequent to the

Parties' performance of rights and obligations under the MOU is the ability of the City to obtain its financing of choice for the Ballpark Project on terms reasonably acceptable to the City; and

WHEREAS, on November 20, 2001, a public hearing was held before the City Council of the City of San Diego [City Council] at which a full presentation was made, including the receipt of written materials and testimony, concerning the terms and conditions upon which the City could obtain its financing of choice; and

WHEREAS, on November 20, 2001, at a public hearing the City Council, the City Council considered whether the terms and conditions of the proposed financing are reasonably acceptable at this time; and

WHEREAS, on November 20, 2001, by Resolution Nos. R-295760, 29561, and 29562, the City Council approved a plan of finance [Plan of Finance] for the 2001 Bonds, a preliminary offering document [Preliminary Offering Document], an Amended and Restated Contract of Purchase, and a Continuing Disclosure Agreement, all relating to the 2001 Bonds, and other actions in connection therewith; and

WHEREAS, it is now fitting to consider such actions as may be necessary and appropriate to implement the purpose and intent of the 1998 Ordinance, the MOU, the Ballpark and Redevelopment Project Implementation Agreement, and the Second Ballpark and Redevelopment Project Implementation Agreement, consistent with both the City's and Agency's obligations

under California law, and the discretion lawfully vested in the City Council acting on behalf of the City, and the Board of Directors of the Agency, acting on behalf of the Agency; and

WHEREAS, the City Council previously adopted Ordinance No. O-18747 (New Series) and the Public Facilities Financing Authority of the City of San Diego [Authority] previously adopted Resolution FA-2000-3 approving and authorizing the issuance and sale by the Authority

of its Lease Revenue Bonds, Series 2001 [2001 Bonds] and approving certain other documents and actions in connection therewith, the proceeds of such 2001 Bonds to be used to finance the construction of a state-of-the-art baseball park [Ballpark], a public park to be located adjacent to the Ballpark, and the grounds and improvements immediately surrounding the Ballpark [collectively, the Ballpark Facility] certain land for the Ballpark Facility, and other related land acquisitions, improvements, and infrastructure [collectively, the Ballpark Project]; and

WHEREAS, there has been presented to this Board today a Preliminary Offering Document relating to the 2001 Bonds being recommended under the Plan of Finance, which is structured as a tax-exempt/limited placement; and

WHEREAS, the Board of Commissioners [Board] of the Authority previously adopted Resolution Number FA-2000-3 approving the form of and authorizing the execution and delivery of a purchase contract relating to the 2001 Bonds [Original Purchase Contract], and approving certain other documents and actions in connection therewith; and

WHEREAS, the Authority desires the 2001 Bonds be sold pursuant to the Purchase Contract, as amended and restated to reflect the new Plan of Finance described in the Preliminary Offering Document, with Merrill Lynch, Pierce, Fenner, and Smith Incorporated as purchaser of the 2001 Bonds; and

WHEREAS, in connection with the issuance and sale of the 2001 Bonds, it is necessary and appropriate that a Continuing Disclosure Agreement [Disclosure Agreement] be approved and authorized; and

WHEREAS, the Authority is authorized to undertake the actions described in this Resolution pursuant to applicable laws of the State of California; NOW THEREFORE,

BE IT RESOLVED by the Board, as follows:

1. That all of the foregoing recitals are true and correct, and the Board so finds and

determines.

2. That the form of the Preliminary Offering Document relating to the 2001 Bonds, a copy of which is on file in the Office of the City Clerk as Document No. RR-295760, and is submitted to this meeting, is hereby approved for use in connection with the tax-exempt/limited placement of the 2001 Bonds, with such changes as may be required or approved by the Chair or the Vice Chair of the Authority or their specified designees [Authorized Officers], and the General Counsel to the Authority or his specified designee. The Authorized Officers, and each of them, are hereby authorized, for in the name and on behalf of the Authority, to certify, if necessary, to the purchasers of the 2001 Bonds that the Preliminary Offering Document is “deemed final” for the purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 [Rule] (except for the omission of certain final pricing, rating, and related information as permitted by the Rule). The Authorized Officers are hereby authorized and directed to assist in the preparation of the final offering document [Offering Document] in substantially the form of the Preliminary Offering Document, and the Authorized Officers are authorized to execute and deliver, for and in the name and on behalf of the Authority, the Offering Document, with such changes and additions as the Authorized Officers shall require or approve as being in the best interests of the Authority, such approval to be conclusively evidenced by the execution of said Offering Document. The distribution of the Preliminary Offering Document and the Offering Document in connection with the tax-exempt/limited placement of the 2001 Bonds is hereby approved.

3. That the form and content of the amended and restated Contract of Purchase [Purchase Contract] dated the date of the sale of the 2001 Bonds, among the Authority, the City and Merrill Lynch, Pierce, Fenner, and Smith Incorporated as purchaser [Purchaser], a copy of which is on file in the office of the City Clerk as Document Number RR-295761, is hereby approved. The

Authorized Officers, and each of them, are hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Purchase Contract in substantially the form presented to and considered at this meeting, with such additions and changes therein as the Authorized Officers, and each of them, shall require or approve as being in the best interests of the Authority, and as is approved as to form by the General Counsel to the Authority or his specified designee, such approval to be conclusively evidenced by the execution and delivery thereof. In connection with the execution and delivery of the Purchase Contract, the Authorized Officers, and each of them, are further authorized to negotiate the principal amount of the 2001 Bonds to be sold pursuant to the Purchase Contract up a maximum aggregate principal amount of not to exceed One Hundred Ninety-nine Million Dollars (\$ 199,000,000), the redemption and tender features of the 2001 Bonds and the indemnification provisions of the Purchase Contract, provided, (1) the true interest cost of the issue (a) shall not exceed the maximum interest rate permitted by law, and (b) shall, in the judgment of the financial advisor to the City and the Authority, be an acceptable interest rate given the rating, security, and other terms of the issue; and (2) the maximum aggregate underwriter's discount from the principle amount of the 2001 Bonds shall not exceed 1.25 % of the aggregate principal amount of the 2001 Bonds (without regard to original discount, if any), the maximum amount payable as underwriter's expenses, including the fees and expenses of underwriter's counsel, shall not exceed \$300,000, and the final maturity of the 2001 Bonds shall not be later than 40 years of the date of issuance thereof.

4. That the form and content of the Disclosure Agreement tentatively dated as of December 1, 2001, by and between the City and the Trustee, pursuant to which the City agrees to make certain disclosures as specified therein, a copy of which is on file in the office of the City Clerk as Document No. RR-295762, is hereby approved. The Authorized Officers, and each of them, are hereby authorized, and directed, for and in the name and on behalf of the Authority, to

execute and deliver the Disclosure Agreement in substantially the form presented to and considered at this meeting, and the Secretary of the Authority or his specified designees, and each of them, are authorized to attest thereto, with such additions and changes therein as the Authorized Officers, and each of them, shall require or approve as being in the best interests of the Authority, and as are approved as to form by the General Counsel to the Authority or his specified designee, such approval to be conclusively evidenced by such officer's execution and delivery of said Disclosure Agreement.

5. That all actions heretofore taken by any officers, employees or agents of the City and the Authority with respect to the issuance, delivery or sale of the 2001 Bonds, or in connection with or related to any of the documents referenced herein or the financing of the Project, are hereby approved, confirmed and ratified; and such other officials, employees and agents of the City and the Authority as may be authorized by the Chair and the Vice Chair of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents (including but not limited to the Tax Certificate and Agreement, if requested by Orrick Herrington & Sutcliffe LLP), which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the 2001 Bonds and the disbursement of proceeds thereof in accordance with this Resolution.

APPROVED: CASEY GWINN, General Counsel

By  
Kelly J. Salt  
Deputy General Counsel

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