

RESOLUTION NO. R-268193

APR 27 1987

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO, CALIFORNIA, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF REFUNDING BONDS PURSUANT TO THE "REFUNDING ACT OF 1984 FOR 1915 IMPROVEMENT ACT BONDS"

(Assessment District No. 3990-R [Lopez Canyon Sewer and Retention Basin Refunding])

WHEREAS, the CITY COUNCIL of the CITY OF SAN DIEGO, CALIFORNIA, has heretofore undertake proceedings pursuant to the "Refunding Act of 1984 for 1915 Improvement Act Bonds" ("Refunding Law"), being Division 11.5 of the Streets and Highways Code of the State of California, and has confirmed reassessments upon lands within a special assessment district, said special district known and designated as ASSESSMENT DISTRICT NO. 3990-R (LOPEZ CANYON SEWER AND RETENTION BASIN REFUNDING) (hereinafter referred to as the "Refunding District"); and,

WHEREAS, said proceedings provided for the issuance of bonds pursuant to the "Refunding Act of 1984 for 1915 Improvement Act Bonds", being Division 11.5 of said Code, and it is necessary to establish terms and provisions of such issuance.

WHEREAS, there has now been presented for consideration by this legislative body an Offering Memorandum containing information including but not limited to the Refunding District and the type of bonds, including terms and conditions thereof.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. Recitals. That the above recitals are all true and correct.

SECTION 2. Issuance of Refunding Bonds. Refunding Bonds in the aggregate principal amount as shown in the "Refunding and Reassessment Engineer's Report", as approved by this legislative body, shall be issued as hereinafter provided upon the security of unpaid reassessments levied in accordance with the Refunding Law and under and pursuant to the proceedings thereunder duly had and taken. The refunding

bonds herein provided to be issued shall be known as "City of San Diego Assessment District No. 3990-R (Lopez Canyon Sewer and Retention Basin Refunding) Refunding Bonds", (the "Refunding Bond" or "Refunding Bonds"), and shall be dated May 28, 1987. The Refunding Bonds shall be issued only in fully registered form in denominations of \$5,000 or any integral multiple thereof. The Refunding Bonds shall be issued in serial form with annual maturities on September 2nd of every year succeeding 12 months after their date, until September 2, 1999. Refunding Bonds shall mature in the amounts and on the dates and at the rates of interest to be set forth in the Bond Purchase Contract to be submitted to and subject to the approval of this legislative body.

SECTION 3. Form of Refunding Bonds. The Refunding Bonds shall be issued pursuant to the provisions of the Refunding Law and shall be substantially in the format of bonds as authorized pursuant to the terms and provisions of the "Improvement Bond Act of 1915", being Division 10 of said Code, except as such format may vary from the terms and conditions set forth in this Resolution.

SECTION 4. Interest. Each Refunding Bond shall be of a single maturity and shall bear interest at a rate not to exceed 12% per annum from the interest payment date next preceding the date on which it is authenticated and registered, unless said Refunding Bond is authenticated and registered as of an interest payment date, in which case it shall bear interest from said interest payment date, or unless said Refunding Bond is authenticated and registered prior to the first interest payment date, in which case it shall bear interest from its date, until payment of its principal sum has been discharged. Interest shall be payable commencing on March 2, 1988, and semi-annually thereafter on September 2 and March 2 of each year to maturity.

00766

R-268193

SECTION 5. Place of Payment. The principal and interest on the Refunding Bonds shall be payable in lawful money of the United States of America at the Office of the Treasurer of the City of San Diego (the "Registrar, Paying Agent and Transfer Agent").

Principal and interest on said Refunding Bonds shall be paid by check or draft to the registered owner thereof at his address as it appears on the books of registration, or at such address as may have been filed with the Registrar for that purpose, as of the 15th day immediately preceding said interest payment date.

SECTION 6. Redemption. This Refunding Bond, or a portion thereof if issued in a denomination greater than \$5,000, shall be subject to redemption and payment in advance of maturity in increments of \$5,000 as provided in Section 8768 of the Streets and Highways Code, on the 2nd day of March or September in any year, by giving the notice provided in said law to the registered owner thereof at his address as it appears on the books of registration and by paying principal of and accrued interest on such redeemed amount, together with a premium equal to three percent (3%) of the redeemed principal amount. If less than the entire Refunding Bond is redeemed, the unredeemed portion shall be reissued to the registered owner thereof.

SECTION 7. Transfer of Registered Refunding Bonds. Any fully registered Refunding Bond may, in accordance with its terms, be transferred upon the books of registration required to be kept pursuant to the provisions of Section 8 authorized attorney or legal representative, upon surrender of such fully registered Refunding Bond for registration of such transfer, accompanied by delivery of a written instrument or transfer in a form approved by the Transfer Agent and Treasurer and by the owner of said Refunding Bonds, duly executed.

00767

R-268193

The Transfer Agent shall require the payment by the bondholder requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer and such charges as provided for in the system of registration for registered debt obligations.

No transfer of fully registered Refunding Bonds shall be required to be made during the fifteen (15) days next preceding each interest payment date.

SECTION 8. Exchange of Registered Refunding Bonds. Fully registered Refunding Bonds may be exchanged at the office of the designated Transfer Agent/Registrar, for a like aggregate principal amount of Refunding Bonds of the same series, interest rate and maturity, subject to the terms and conditions provided in the system of registration for registered debt obligations, including the payment of certain charges, if any, upon surrender and cancellation of this Refunding Bond. Upon such transfer and exchange, a new registered Refunding Bond or Bonds of any authorized denomination or denominations of the same maturity for the same aggregate principal amount will be issued to the transferee in exchange therefor.

SECTION 9. Books of Registration. There shall be kept by the Registrar sufficient books for the registration and transfer of the Refunding Bonds and, upon presentation for such purpose, the Registrar shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said register, Refunding Bonds as hereinbefore provided.

SECTION 10. Execution of Bonds. The Refunding Bonds shall be executed in facsimile by the Treasurer and attested by the City Clerk, and the corporate seal shall be imprinted in facsimile on the Refunding Bonds. The Refunding Bonds shall then be delivered to the Transfer Agent and Registrar, for authentication and registration. In case an officer who shall have signed or attested to any of the Refunding Bonds by facsimile or otherwise shall cease to be such officer before the authentication, delivery and issuance of the Refunding Bonds, such Refunding Bonds nevertheless may be authenticated, delivered and issued, and upon such authenticated,

00768

R-268193

delivered and issued, and upon such authentication, delivery and issue, shall be as binding as though those who signed and attested the same had remained in office.

SECTION 11. Authentication. Only such of the Refunding Bonds as shall bear thereon a certificate of authentication substantially in the form below, manually executed by the Transfer Agent and Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this Resolution, and such certificate of the Transfer Agent and Registrar shall be conclusive evidence that the Refunding Bonds so authenticated have been duly executed, authenticated and delivered hereunder, and are entitled to the benefits of this Resolution.

FORM OF CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This bond has been authenticated and registered on \_\_\_\_\_.

\_\_\_\_\_ as Paying Agent, Registrar and Transfer Agent

By: \_\_\_\_\_

SECTION 12. Negotiability, Registration and Transfer of Refunding Bonds. The transfer of any Refunding Bond may be registered only upon such books of registration upon surrender thereof to the Transfer Agent and Registrar, together with an assignment duly executed by the owner or his attorney or legal representative, in satisfactory form. Upon any such registration of transfer, a new Refunding Bond or Refunding Bonds shall be authenticated and delivered in exchange for such Refunding Bond, in the name of the transferee, of any denomination or denominations authorized by this Resolution, and in an aggregate principal amount equal to the principal amount of such Refunding Bond or principal amount of such Refunding Bond or Refunding Bonds so surrendered. In all cases in which Refunding Bonds shall be exchanged or transferred, the Transfer Agent and Registrar shall authenticate at the earliest practical time, Refunding Bonds in accordance with the provisions of this Resolution. All Refunding Bonds surrendered in such exchange or registration transfer shall

00769

R- 268193

forthwith be cancelled. The legislative body may make a charge for every such exchange or registration of transfer of Refunding Bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer. The Transfer Agent and Registrar shall not be required to make such exchange or registration of transfer of Refunding Bonds during the fifteen (15) days immediately preceding any March 2nd or September 2nd.

SECTION 13. Ownership of Refunding Bonds. The person in whose name any Refunding Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal and redemption premium, if any, of any such Refunding Bond, and the interest on any such Refunding Bond, shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Refunding Bond, including the redemption premium, if any, and interest thereon, to the extent of the sum or sums so paid.

SECTION 14. Mutilated, Destroyed, Stolen or Lost Refunding Bonds. In case any Refunding Bond secured hereby shall become mutilated or be destroyed, stolen or lost, the legislative body shall cause to be executed and authenticated a new Refunding Bond of like date and tenor in exchange and substitution for and upon the cancellation of such mutilated Refunding Bond or in lieu of and in substitution for such Refunding Bond destroyed, stolen or lost, upon the owner's paying the reasonable expenses and charges in connection therewith, and, in the case of a Refunding Bond destroyed, stolen or lost, his filing with the legislative body of evidence satisfactory to it and to the Auditor thereof that such Refunding Bond was destroyed, stolen or lost, and of his ownership thereof, and furnishing the legislative body with indemnity satisfactory to it.

00770

R- 268193

SECTION 15. Cancellation of Refunding Bonds. All Refunding Bonds paid or redeemed, either at or before maturity, shall be cancelled upon the payment or redemption of such Refunding Bonds, and shall be delivered to the transfer agent and registrar when such payment or redemption is made. All Refunding Bonds cancelled under any of the provisions of this Resolution shall be destroyed by the Transfer Agent and Registrar, which shall execute a certificate in duplicate describing the Refunding Bonds so destroyed, and shall retain said executed certificate in its permanent files for the issue.

SECTION 16. Reserve Fund. Pursuant to Part 16 of Division 10 of the California Streets and Highways Code, as amended, there shall be created a special reserve fund for the Refunding Bonds to be designated by the name of the Refunding District and specified as the special "Reserve Fund". The Reserve Fund shall be funded as follows: The designated amount shall be six percent (6%) of the principal amount of the Refunding Bonds and shall be deposited in the Reserve Fund out of Refunding Bond proceeds.

Monies in the Reserve Fund shall be applied as follows:

A. Amounts in said Reserve Fund shall be transferred to the Redemption Fund for the bonds if, as a result of delinquencies in the payment of reassessments, there are insufficient monies in said Redemption Fund to pay principal of and interest on the bonds. Amounts so transferred shall be repaid to the Reserve Fund from proceeds from the redemption or foreclosure of property with respect to which an reassessment is unpaid and from payments of the delinquent reassessments;

B. Whenever monies in the Reserve Fund are sufficient to retire all of the Refunding Bonds outstanding, plus accrued interest thereon, such money shall be transferred to the Redemption Fund for the Refunding Bonds and collection of the remaining unpaid assessments shall cease.

00771

R- 268193

C. In the event assessments are paid in cash in advance of their final maturity date, the Treasurer is authorized to reduce the minimum amount of the Reserve Fund and increase the annual Reserve Fund disbursements in the proportion in which the reassessments paid in cash bears to the total original unpaid reassessments.

SECTION 17. Refunding Trust Fund. The proceeds from the sale of the Refunding Bonds, after deposit of required amounts in the Reserve Fund and the Redemption Fund, and the payment of the costs of issuance of the Refunding Bonds, and all City contributions not otherwise dedicated shall be placed in the fund hereby created, pursuant to Sections 9613 and 9616 of the California Streets and Highways Code, as amended, which shall be called the "Refunding Trust Fund", and the monies in said Fund shall be used only for the purpose of refunding the bonds to be refunded, and the funds shall applied only as permitted by the Refunding Law.

SECTION 18. Investment of Refunding Trust Fund Monies. Immediately upon deposit of the proceeds from the sale of the Refunding Bonds and the applicable City contributions into the Refunding Trust Fund, an amount thereof necessary to pay the principal of and interest and redemption premiums on the refunded bonds on July 2, 1987, shall be invested by the Treasurer in "Federal securities" as defined by Section 9600(c) of the California Streets and Highways Code, as amended. Such investment shall mature so as to ensure that such monies, and any interest earned thereon, are available for the purpose of redeeming the refunded bonds on July 2, 1987. Monies in the Refunding Trust Fund may not be invested so that the interest earned thereon exceeds the "yield" on the Refunding Bonds, as that term is defined in the Internal Revenue Code of 1986 (the "Code").

SECTION 19. Redemption of Refunding Bonds. The Treasurer shall undertake proceedings pursuant to Division 11.1 of the Streets and Highways Code of the State of California to cause the advance retirement of the refunded bonds on July 2, 1987.

00772

R- 268193



Principal of and interest and redemption premiums on the refunded bonds shall be payable from the Refunding Trust Fund. Any surplus in the Refunding Trust Fund after completion of the advance retirement of the Refunded Bonds shall be immediately transferred to the Redemption Fund.

SECTION 20. Costs of Issuance. The costs of issuing the Refunding Bonds shall be paid from the proceeds of sale of the Refunding Bonds.

SECTION 21. Redemption Fund. Principal of and interest on said Refunding Bonds shall be paid out of the Redemption Fund created pursuant to Section 8671 of the California Streets and Highways Code. Accrued interest paid by the purchaser of the Refunding Bonds, if any, shall be deposited in the Redemption Fund.

SECTION 22. Covenant to Foreclose. The legislative body hereby covenants that upon default of any reassessment payment due, it will cause Superior Court foreclosure proceedings to be brought within one hundred fifty (150) days of such default and thereafter diligently prosecute to completion such proceedings. Such foreclosure proceedings may be deferred if funds are advanced to the special Reserve Fund to keep said Fund continually at the level set forth in the Section entitled "Reserve Fund" set forth hereinabove.

SECTION 23. Order to Print and Authenticate Refunding Bonds. The Treasurer is hereby instructed to cause Refunding Bonds, as set forth above, to be printed, and to proceed to cause said Refunding Bonds to be authenticated and delivered to an authorized representative of the purchaser, upon payment of the purchase price as set forth in the accepted proposal for the sale of Refunding Bonds.

SECTION 24. Non-Arbitrage Covenant. The City shall not take or permit nor suffer to be taken any action with respect to the gross proceeds of the Refunding Bonds as such term is defined under the Internal Revenue Code of 1986, which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Refunding Bonds,

00773

R-268193

would have caused the Refunding Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and all applicable regulations of the United States Department of Treasury ("Treasury Regulations") promulgated thereunder.

SECTION 25. Arbitrage Certificate. On the basis of the facts, estimates and circumstances now in existence and in existence on the date of issue of the Refunding Bonds, as determined by the Treasurer, said Treasurer is hereby authorized to certify that it is not expected that the proceeds of the issue will be used in a manner that would cause such obligations to be arbitrage bonds. Such certification shall be delivered to the purchaser together with the Refunding Bonds.

SECTION 26. Investment of Monies in Refunding Bond Funds. Except as otherwise provided herein, all monies held by the Treasurer in any of the funds or accounts established pursuant to these proceedings and all monies held by the City in any fund or account which is reasonably expected to be used to pay, or which is pledged for the payment of, debt service on the Refunding Bonds shall not be invested so as to adversely affect the exemption from Federal income taxation of interest on the Refunding Bonds. In furtherance of this covenant, City agrees to follow and adhere to such investment instructions as Bond Counsel may provide at the closing of the Refunding Bond issue or from time to time thereafter, so as to assure the continuing exemption of interest on the Refunding Bonds from Federal income taxation.

SECTION 27. Covenant to Maintain Tax Exempt Status. The City covenants that it will not make any use of the proceeds of the Refunding Bonds issued hereunder which would cause the Refunding Bonds to become "arbitrage bonds" subject to Federal income taxation pursuant to the provisions of Section 148(a) of the Code, or to become "Federally guaranteed obligations" as defined in Section 149(b) of the Code, or to become "private activity bonds" as defined in Section 141(a) of the Code. To this end, the City will comply with all applicable requirements of the Code and all Treasury Regulations issued thereunder to the extent that such requirements and

00774

R- 2681.93

regulations are, at the time, applicable and in effect. Additionally, the City agrees to implement and follow each and every recommendation, including without limitation such investment instructions pertaining to the Refunding Bond proceeds, as may be provided by Bond Counsel and deemed to be necessary to be undertaken by the City to ensure compliance with all applicable provisions of the Code and the Treasury Regulations in order to preserve the exemption of interest on the Refunding Bonds from Federal income taxation.

SECTION 28. Amendment. Without the consent of the bondowners, the City hereafter may amend this Resolution to add, modify or delete provisions if the same is necessary or desirable, in the opinion of Bond Counsel, to assure the exemption of interest on the Refunding Bonds from Federal income taxation.

SECTION 29. Designation of Transfer Agent, Paying Agent and Registrar. The Treasurer of the City of San Diego is hereby designated Transfer Agent, Paying Agent and Registrar with respect to these proceedings and the Refunding Bonds to be issued.

SECTION 30. Offering Memorandum. The Offering Memorandum, as prepared and submitted, is hereby approved and distribution by the underwriter is hereby authorized.

APPROVED:

JOHN W. WITT, City Attorney

By:   
John K. Riess, Deputy

JKR:mrh  
04/13/87  
Or. Dept: E&D  
r-87-2116

00775

R- 268193

1126

APR 27 1987

Passed and adopted by the Council of The City of San Diego on.....  
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
William Jones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksmma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Celia Ballesteros	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR  
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR  
City Clerk of The City of San Diego, California.

(Seal)

By *Barbara Carter*, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number **R-268193** Adopted **APR 27 1987**

RECEIVED  
CITY CLERK'S OFFICE  
1997 APR 15 PM 1:47  
SAN DIEGO, CALIF.

1997 11