

JUN 23 1987

RESOLUTION NO. R- **268662**

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

(Assessment District No. 4007 - First San Diego River Improvement Project (FSDRIP))

WHEREAS, the CITY COUNCIL of the CITY OF SAN DIEGO, CALIFORNIA, has heretofore undertaken proceedings pursuant to the "Municipal Improvement Act of 1913", being Division 12 of the Streets and Highways Code of the State of California, and has confirmed assessments upon lands within a special assessment district described in a Resolution of Intention previously adopted for said improvements, said special assessment District known and designated as ASSESSMENT DISTRICT NO. 4007 - FIRST SAN DIEGO RIVER IMPROVEMENT PROJECT (FSDRIP) (hereinafter referred to as the "Assessment District"); and,

WHEREAS, said proceedings provided for the issuance of bonds pursuant to the "Improvement Bond Act of 1915", being Division 10 of the Streets and Highways Code of the State of California, and it is necessary to establish terms and provisions of such issuance; and,

WHEREAS, the final unpaid balance to assessment, as well as the denomination and amounts to mature each year, cannot be determined until following the 30-day cash collection period after the recordation of said assessment; and,

WHEREAS, there has now been presented for consideration by this legislative body an Official Statement containing information including but not limited to the Assessment 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.

00795

SECTION 2. Unpaid Assessments. The Treasurer shall, immediately upon the completion of the 30-day cash collection period, determine the assessments which are unpaid and the aggregate amount thereof as authorized by Section 8621 of the Streets and Highways Code of the State of California.

SECTION 3. Term of Bonds. Serial bonds to represent the unpaid assessments, and bear interest at a rate not to exceed the current legal maximum rate of 12% per annum, will be issued in the manner provided in the "Improvement Bond Act of 1915", being Division 10 of the Streets and Highways Code of the State of California, the last installment of which bonds shall mature a maximum of and not to exceed NINETEEN (19) years from the second day of September next succeeding twelve (12) months from their date. The provisions of Part 11.1 of said Act, providing an alternative procedure for the advance payment of assessments and the calling of bonds shall apply.

SECTION 4. Registered Bonds. Said bonds shall be issuable only as fully registered bonds in the denomination of \$5,000, or any integral multiple thereof, except for one bond maturing in the first year of maturity, which shall include the amount by which the total issue exceeds the maximum integral multiple of \$5,000 contained therein.

SECTION 5. Date of Bonds. All of said bonds shall be dated the 9th day of July, 1987, and interest shall accrue from that date.

SECTION 6. Maturity and Denomination. The bonds shall be issued in serial form with annual maturities on September 2nd of every year succeeding twelve (12) months after their date, until the whole is paid. The amount maturing each year shall be such as to result in approximately equal annual debt service during the term of the issue as reflected by the interest rate and/or rates and principal amounts maturing in the respective years of maturity, and the Treasurer or designated Registrar shall, immediately upon completion of the cash collection period, prescribe the denominations of the bonds, which shall be in convenient amounts, not necessarily equal, and shall further provide for their issuance and delivery.

00796

R-268662

SECTION 7. Interest. Each bond shall be of a single maturity and shall bear interest at the rate as set forth in the accepted bid proposal for said bonds from the interest payment date next preceding the date on which it authenticated and registered, unless said 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 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.

SECTION 8. Place of Payment. The principal and interest on the bonds shall be payable in lawful money of the United States of America at the office of the Treasurer, or such paying agent as may be designated by Resolution the legislative body.

Principal and interest on said 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 Treasurer for that purpose, as of the 15th day immediately preceding said interest payment date.

SECTION 9. Redemption. This 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 bond is redeemed, the unredeemed portion shall be reissued to the registered owner thereof. The bonds shall not be subject to refunding pursuant to Division 11 or Division 11.5 of the Streets and Highways Code of the State of California prior to September 2, 1992.

00797

R-268662

SECTION 10. Transfer of Registered Bonds. Any fully registered bond may, in accordance with its terms, be transferred upon the books of registration required to be kept pursuant to the provisions of Section 11 by the owner in whose name it is registered, or by his duly authorized attorney or legal representative, upon surrender of such fully registered bond for registration of such transfer, accompanied by delivery of a written instrument or transfer in a form approved by the Treasurer and by the owner of said bonds, duly executed.

The Treasurer 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 bonds shall be required to be made during the fifteen (15) days next preceding each interest payment date.

SECTION 11. Exchange of Registered Bonds. Fully registered bonds may be exchanged at the office of the Treasurer, or designated transfer agent/registrar, for a like aggregate principal amount of 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 bond. Upon such transfer and exchange, a new registered 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 12. Books of Registration. There shall be kept by the Treasurer sufficient books for the registration and transfer of the bonds and, upon presentation for such purpose, the Treasurer shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said register, bonds as hereinbefore provided.

0798

R-268662

SECTION 13. Execution of Bonds. The bonds shall be executed in facsimile by the Treasurer and by the City Clerk, and the corporate seal shall be imprinted in facsimile on the bonds. The 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 bonds by facsimile or otherwise shall cease to be such officer before the authentication, delivery and issuance of the bonds, such bonds nevertheless may be authenticated, 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 14. Authentication. Only such of the 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 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 _____.

TREASURER, CITY OF SAN DIEGO
as Transfer Agent and Registrar

By: _____

SECTION 15. Negotiability, Registration and Transfer of Bonds. The transfer of any 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 bond or bonds shall be authenticated and delivered in exchange for such bond, in the name of the transferee, of any

00799

R-268662

denomination or denominations authorized by this Resolution, and in an aggregate principal amount equal to the principal amount of such bond or principal amount of such bond or bonds so surrendered. In all cases in which bonds shall be exchanged or transferred, the transfer agent and registrar shall authenticate at the earliest practical time, bonds in accordance with the provisions of this Resolution. All bonds surrendered in such exchange or registration transfer shall forthwith be cancelled. The legislative body may make a charge for every such exchange or registration of transfer of 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 bonds during the fifteen (15) days immediately preceding any March 2nd or September 2nd.

SECTION 16. Ownership of Bonds. The person in whose name any 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 bond, and the interest on any such 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 bond, including the redemption premium, if any, and interest thereon, to the extent of the sum or sums so paid.

SECTION 17. Mutilated, Destroyed, Stolen or Lost Bonds. In case any bond secured hereby shall become mutilated or be destroyed, stolen or lost, the legislative body shall cause to be executed and authenticated a new bond of like date and tenor in exchange and substitution for and upon the cancellation of such mutilated bond or in lieu of and in substitution for such bond destroyed, stolen or lost, upon the owner's paying the reasonable expenses and charges in connection therewith, and,

00800

R-268662

in the case of a bond destroyed, stolen or lost, his filing with the legislative body of evidence satisfactory to it and to the Treasurer thereof that such bond was destroyed, stolen or lost, and of his ownership thereof, and furnishing the legislative body with indemnity satisfactory to it.

SECTION 18. Cancellation of Bonds. All bonds paid or redeemed, either at or before maturity, shall be cancelled upon the payment or redemption of such bonds, and shall be delivered to the transfer agent and registrar when such payment or redemption is made. All 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 bonds so destroyed, and shall retain said executed certificate in its permanent files for the issue.

SECTION 19. Creation of Funds. The Treasurer is hereby authorized and directed to establish the following Funds for purposes of making payment for the costs and expenses for the works of improvement and payment of principal and interest on the bonds. The Funds to be created are designated as follows:

IMPROVEMENT FUND: The proceeds from the sale of the bonds, after deposit of required amounts in the Reserve Fund and Redemption Fund, shall be placed in the Fund hereby created, pursuant to Sections 10602 and 10424 of the California Streets and Highways Code, as amended, which shall be called the "Improvement Fund", and the monies in said Fund shall be used only for the purposes authorized in said assessment proceedings. Any surplus in the Improvement Fund after completion of the improvements shall remain in the Improvement Fund for a period of not less than two (2) years from the receipt of bond proceeds as provided in Section 10427.1 of the California Streets and Highways Code, and thereafter shall be utilized or distributed as determined by the legislative body.

00801

R-268662

REDEMPTION FUND: The Treasurer is hereby authorized and directed to keep a Redemption Fund designated by the name of the proceedings, into which he shall place all sums received for the collection of the assessments and the interest thereon, together with all penalties, if applicable.

Principal of and interest on said bonds shall be paid to the registered owner 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 bonds, if any, shall be deposited in the Redemption Fund. In all respects not recited herein, said bonds shall be governed by the provisions of the "Improvement Bond Act of 1915", Division 10 of the California Streets and Highways Code, as amended. Under no circumstances shall the bonds or interest thereon be paid out of any other fund except as provided by law.

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 bonds to be designated by the name of the Assessment District and specified as the special "Reserve Fund". The Reserve Fund shall be funded as follows: The initial designated amount equal to ten percent (10%) of the principal amount of the bonds shall be deposited in the Reserve Fund out of the 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 assessments, 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 assessment is unpaid and from payments of the delinquent assessments;

00802

R-268662

B. Interest earned on permitted investments of Reserve Fund monies shall remain in the Reserve Fund to maintain it at an amount equal to the lesser of (i) Maximum Annual Debt Service on the bonds or (ii) ten percent (10%) of the principal amount of the bonds. The term "Maximum Annual Debt Service on the bonds" means the sum of (i) the interest falling due on the then outstanding bonds, assuming that all then outstanding bonds are retired at maturity, and (ii) the principal amount of all then outstanding bonds falling due by their terms, all as computed for the twelve (12) month period ending September 2nd in which such sum is the largest. The Treasurer shall determine if there is any amount in the Reserve Fund in excess of the lesser of the above two sums as of June 30 of each year, and shall transfer any such excess to the Redemption Fund by July 15 of such year, in the manner provided in Part 16 of said Division 10;

C. The amount of the annual Reserve Fund disbursement of earned interest shall be credited toward installments of unpaid assessments each year during which any part of the bonds remain outstanding. The Auditor's Record, prepared pursuant to Section 8682 of the Streets and Highways Code, shall reflect credits against each of the unpaid assessments in the manner provided in Section 10427.1 of said Streets and Highways Code, in amounts equal to each parcel's proportionate share of the annual reserve fund disbursement.

No portion of the annual Reserve Fund disbursement shall be transferred in any year in excess of the amount which would cause the Reserve Fund to fall below the original amount of the Reserve Fund, minus adjustments to reflect the discharge of assessments prior to maturity made to that point.

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

00803

R- 268662

E. In the event that any annual Reserve Fund disbursement was not fully made in any year because to have done so would have caused the Reserve Fund to fall below the minimum amount for that year, the Treasurer may thereafter transfer and credit any amounts in excess of the minimum amount toward the assessment installments due in subsequent years.

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 assessments paid in cash bears to the total original unpaid assessments.

SECTION 20. No City Liability. It is hereby further determined and declared that the City will not obligate itself to advance any available funds from the City Treasury to cure any deficiency or delinquency which may occur in the bond redemption fund by failure of property owners to pay annual special assessments. This determination shall be clearly set forth and stated in the title of the bonds to be issued pursuant to these proceedings as authorized and required by Section 8769 of the Streets and Highways Code of the State of California.

SECTION 21. Covenant to Foreclose. The legislative body hereby covenants that upon default of any assessment 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 22. Covenant to Maintain Tax-Exempt Status. The City covenants that it will not make any use of the proceeds of the bonds issued hereunder which would cause the 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-

00804
R-268662

guaranteed obligations" pursuant to the provisions of Section 149(b) of the Code, or to become "private activity bonds" pursuant to the provisions of Section 141(a) of the Code. To that end, the City will comply with all applicable requirements of the Code and all regulations of the United States Department of Treasury issued thereunder to the extent such requirements are, at the time, applicable and in effect. Additionally, the City agrees to implement and follow each and every recommendation 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 in order to preserve the exemption of interest on the bonds from Federal income taxation.

SECTION 23. Covenant Regarding Arbitrage. The City shall not take or permit nor suffer to be taken any action with respect to the gross proceeds of the bonds as such term is defined under the Code 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 bonds, would have caused the bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the regulations promulgated thereunder.

SECTION 24. Order to Print and Authenticate Bonds. The Treasurer is hereby instructed to cause bonds, as set forth above, to be printed, and to proceed to cause said 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 bonds.

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 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 bonds.

00805

R-268662

SECTION 26. Designation of Transfer Agent, Paying Agent and Registrar. The CITY TREASURER is hereby designated transfer agent, paying agent and registrar with respect to these proceedings and the bonds to be issued.

SECTION 27. Official Statement. The Official Statement, as prepared and submitted, is hereby approved and adopted, and the execution and distribution is hereby authorized. A copy of said Official Statement shall be kept on file with the transcript of these proceedings and remain open for public inspection.

APPROVED:

JOHN W. WITT, City Attorney

By: 
John K. Riess, Deputy

JKR:mrh
06/12/87
r-87-2635

00806

R-268662

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JUN 23 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 Struiksma	<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.

(Seal)

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

By *Barbara Baxter*, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number *R-268662* Adopted *JUN 23 1987*