

(R-89-2449)

RESOLUTION NUMBER R- 273817

ADOPTED ON JUN 20 1989

RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, CALIFORNIA, ISSUING LIMITED OBLIGATION BONDS UNDER THE IMPROVEMENT BOND ACT OF 1915; PRESCRIBING THE FORM, MATURITIES AND INTEREST RATES FOR THE BONDS; PROVIDING FOR REDEMPTION PRIOR TO MATURITY; ESTABLISHING A CONSTRUCTION FUND, A REDEMPTION FUND, AND A RESERVE FUND; DESIGNATING A PAYING AGENT, REGISTRAR AND TRANSFER AGENT FOR THE BONDS; MAKING COVENANTS TO THE BONDHOLDERS, AND MAKING CERTAIN OTHER FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH.

Assessment District No. 4029

(Sorrento Valley Road - Sorrento Valley Boulevard to I-805)

WHEREAS, this City Council has heretofore taken proceedings under the Municipal Improvement Act of 1913, Division 12 of the Streets and Highways Code (the "1913 Act proceedings"), and has confirmed an assessment upon the district described in its Resolution of Intention, Resolution No. R-273086; and

WHEREAS, the 1913 Act proceedings provide for the issuance of bonds pursuant to the Improvement Bond Act of 1915, Division 10 of the Streets and Highways Code; and

WHEREAS, the assessment and the assessment diagram in the 1913 Act proceedings have been recorded with the Superintendent of Streets pursuant to Section 10600 of the Streets and Highways Code and a notice of assessment and diagram along with a list of owners of property assessed have been recorded with the County

Recorder pursuant to Section 3114 of said Streets and Highways Code and Section 27288.1 of the Government Code; and

WHEREAS, following the elapse of thirty (30) days after the date of recording of said assessment and diagram with the Superintendent of Streets the Treasurer of the City has filed a complete list of all unpaid assessments; and

WHEREAS, the aggregate amount of the unpaid assessments on privately owned land within said Assessment District No. 4029 is \$1,631,756.13; and

WHEREAS, this Council desires, pursuant to Section 8650.1 of the Streets and Highways Code, to establish the denomination of the bonds and the amount to mature each year which will be other and different than that provided in Section 8650 of said Code; NOW, THEREFORE,

The Council of The City of San Diego, DOES HEREBY FIND, RESOLVE, DETERMINE AND ORDER as follows:

1. Bond Denominations, Maturity Dates, Interest Payment Dates. That in accordance with the proceedings heretofore taken, limited obligation improvement bonds in the aggregate principal amount of \$1,631,756.13 will be issued pursuant to said Improvement Bond Act of 1915 (the "Bonds"). The Bonds shall be of the denomination of \$5,000 each, or any integral multiple thereof, except for Bond No. 1 which shall be of the denomination of \$ 6,756.13 . The Bonds shall be dated on June 20, 1989. The first payment of interest is payable on March 2, 1990, and thereafter the interest is payable semiannually on September 2 and March 2 of each year. The Bonds shall mature on September 2

in the amounts and years shall bear interest as set forth in Exhibit "A" attached hereto and incorporated by reference.

2. Redemption Prior to Maturity. The Bonds may be redeemed and paid in advance of maturity, in whole or in part, upon the second day of March or September, in any year by giving at least thirty (30) days' notice by registered or certified mail or by personal service to the registered owners thereof at said owners' addresses as they appear on the registration books of the City Treasurer and by paying principal and accrued interest thereon to the date of redemption, together with a premium equal to three percent (3%) of the principal amount being redeemed.

3. Form of Bonds. The Bonds shall be issued substantially in the form set forth in Section 8652 of the Streets and Highways Code and shall be entitled "City of San Diego Limited Obligation Improvement Bonds, Assessment District No. 4029."

4. Paying Agent, Registrar, and Transfer Agent. The Treasurer of the City is hereby designated as the paying agent, registrar and transfer agent for the Bonds.

5. Signing and Sealing of Bonds. The Bonds shall be signed by the Treasurer and the City Clerk of the City, and said Treasurer and City Clerk shall also affix the seal of the City to the Bonds. The Certificate of Authentication and Registration shall be executed by the City Treasurer.

6. Deposit of Net Proceeds; Construction Fund. The net proceeds from the sale of the Bonds after payment of costs of issuance, including legal fees and bond printing, and after making the deposit into the special reserve fund established

under Section 8 hereof, shall be placed in the fund hereby created pursuant to Sections 10602 and 10424 of the Streets and Highways Code and designated "City of San Diego, Assessment District No. 4029 Construction Fund." The monies in said fund shall be used only for the purposes authorized in the 1913 Act proceedings.

7. Payment of Bonds; Redemption Fund. Interest on each of the Bonds shall be paid by check or draft mailed to the owner thereof at such owner's address as it appears on the bond register maintained by the City Treasurer for that purpose as of the fifteenth day immediately preceding each interest payment date. The principal and premium, if any, of the Bonds shall be payable at the office of the City Treasurer. The Bonds shall be paid out of the redemption fund hereby created pursuant to Section 8671 of the Streets and Highways Code and designated "City of San Diego, Assessment District No. 4029 Bond Interest and Redemption Fund" (the "Redemption Fund" herein). In all respects not recited herein, the Bonds shall be governed by the provisions of the Improvement Bond Act of 1915, Division 10 of the Streets and Highways Code.

8. Reserve Fund. Pursuant to Part 16 of said Division 10 of the Streets and Highways Code, Sections 8880 et seq., there is hereby created a special reserve fund for the bonds, and there has been included as an incidental expense of the proceedings an amount equal to ten percent (10%) of the total amount to be levied under the proceedings for deposit to said fund. The special reserve fund, designated as "City of San Diego,

Assessment District No. 4029 Special (Bond) Reserve Fund" (the "Reserve Fund" herein), shall be held and administered by the City Treasurer, and shall constitute a trust fund for the benefit of the holders of the Bonds issued hereunder. Monies in the Reserve Fund shall be available for transfer into the Redemption Fund as follows:

a. Any income realized from the investment of monies in the Reserve Fund shall be credited thereto, provided, however, that in order to assure that the Bonds do not become arbitrage bonds, as defined in the Internal Revenue Code of 1986, as amended, the Reserve Fund shall be administered so that at no time does the amount therein exceed the lesser of:

- (i) 10% of the proceeds from the sale of the Bonds;
- (ii) The maximum annual debt service payable with respect to all Bonds outstanding; or
- (iii) One and one-quarter (1.25) times the average annual debt service on all Bonds outstanding.

b. Monies transferred for the purpose of making up a deficiency in said Redemption Fund shall be applied to the payment of interest, principal, or both on the Bonds coming due on the next date on which payment of such is to be made to bondholders; and in any such case such transfer shall be considered an advance to said Redemption Fund from the Reserve Fund, and the amount so advanced shall be reimbursed to the Reserve Fund from the proceeds of redemption or sale of the parcel for which payment of delinquent installments of assessment payments was made from the Reserve Fund;

c. Monies in the Reserve Fund may be temporarily invested in any authorized investments pursuant to Article 1, Chapter 4, Part 1, Division 2, Title 5 of the Government Code (Sections 53601, et seq.), and all earnings and losses from such investments shall be credited or charged to the Reserve Fund, as the case may be; provided, that to the extent that on September 3 of any year in which Bonds are outstanding monies in the Reserve Fund exceed ten percent (10%) of the Bonds then remaining outstanding and unpaid, the amount in excess of said ten percent (10%) shall be transferred to the Redemption Fund for credit upon unpaid assessments in the manner provided in Section 10427.1 of the Streets and Highways Code;

d. Notwithstanding subparagraphs (b) and (c) of this Section 8, whenever an assessment is redeemed prior to maturity pursuant to Section 2 hereof, there shall be transferred from the Reserve Fund to the Redemption Fund an amount which represents a reduction in the Reserve Fund which is proportional to the reduction in the remaining principal amount of unpaid assessments resulting from such redemption and the amount of said assessment shall be proportionally reduced in accordance with the ratio of the total amount assessed in these proceedings; and

e. Whenever monies in the Reserve Fund are sufficient to retire all remaining outstanding Bonds issued hereunder, whether by advance retirement or otherwise, collection of the principal and interest on the unpaid assessments shall be discontinued and the Reserve Fund shall be liquidated and monies therein shall be transferred to the Redemption Fund and applied to the retirement

of the Bonds; provided, that in the even that monies in the Reserve Fund at the time of liquidation exceed the amount required to retire all outstanding and unpaid Bonds, the excess shall be apportioned to each parcel upon which the individual assessment remained unpaid at the time monies in the Reserve Fund were sufficient to retire all such outstanding and unpaid Bonds, and payments of such apportioned amounts shall be made in cash to the respective owners of such parcels, except that if the excess is not greater than one thousand dollars (\$1,000), the excess may be transferred to the general fund of the City.


9. Covenants of City. The City hereby makes the following covenants for and on behalf of the holders of the Bonds issued hereunder:

a. Covenant to Prosecute Foreclosure Actions. In accordance with Section 8830(b) of the Streets and Highways Code, in the event any installment of any assessment which secures Bonds issued hereunder becomes delinquent in that the amount thereof is not paid when due, the City shall commence within one hundred fifty (150) days from the date of such delinquency, and diligently prosecute to completion an action in the Superior Court of the State of California in and for the County of San Diego to foreclose the lien of the delinquent assessment. Costs in any such action shall be fixed and allowed by such Court and shall include a reasonable attorney's fee, interest, penalties, and other charges or advances authorized by said Improvement Bond Act of 1915, and when so fixed and allowed by such Court shall be included in the judgment made and entered in such action.

b. Covenant Against Arbitrage. The City shall not use or permit to be used any proceeds from the sale of the Bonds or any other funds of the City which will cause the Bonds to be "arbitrage bonds," the interest on which is subject to federal income taxation by reason of Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and to that end so long as any of the Bonds are outstanding, the City shall comply with all requirements of said Sections 103 and 148 and all regulations of the United States Department of the Treasury issued thereunder to the extent that such requirements are, at the time, applicable and in effect; shall establish any funds or accounts, including, if required, accounts to provide for the rebate to the United States of earnings on investment of funds realized from the sale of the Bonds or other City funds, if advised to establish such funds by nationally recognized bond counsel retained by or on behalf of the City; and further, the City will not use or permit the use of the improvements and facilities financed with the proceeds of the Bonds as a "private business use" within the meaning of Section 141(b) of the Internal Revenue Code of 1986, as amended, or by any "exempt person" (including the City) in an "unrelated trade or business" within the meaning of Section 513 of said Code, in such manner or to such extent as would result in the loss of exemption from federal income tax of the interest on such Bonds under Section 148 of said Code; and further, that the City will meet in a timely fashion any and all accounting and filing requirements imposed by existing or pending laws or regulations of the United States, the Department of the Treasury or the Internal Revenue Service.

10. Repeal of Inconsistent Resolutions. Any resolution of the City and any part of such resolution inconsistent with this resolution is hereby repealed to the extent of such inconsistency.

APPROVED: JOHN W. WITT, City Attorney

By 

John K. Riess
Deputy City Attorney

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Or.Dept:E&D
R-89-2449
Form=r.none

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JUN 20 1989

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"/>
Ron Roberts	<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"/>
H. Wes Pratt	<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"/>
J. Bruce Henderson	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<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 *Maureen O'Connor*, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number R-273817 Adopted JUN 20 1989

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DIVISION OFFICE
SAN DIEGO, CA

JUN 7 1968

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COMMUNICATIONS SECTION

UNRECORDED IN

COMMUNICATIONS SECTION

- Mr. Tolson
- Mr. DeLoach
- Mr. Mohr
- Mr. Bishop
- Mr. Casper
- Mr. Callahan
- Mr. Conrad
- Mr. Felt
- Mr. Gale
- Mr. Rosen
- Mr. Sullivan
- Mr. Tavel
- Mr. Trotter
- Tele. Room
- Miss Holmes
- Miss Gandy

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