

(O-96-143)

ORDINANCE NUMBER O- 18289 (NEW SERIES)

ADOPTED ON APR 15 1996

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF REFUNDING CERTIFICATES OF PARTICIPATION AND APPROVAL OF CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. Authorization and Approval of the Refunding Certificates. The City of San Diego (the "City") hereby has determined to authorize and approve the execution and delivery of Refunding Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program, Series 1991) Series 1996B (the "Refunding Certificates") in an aggregate principal amount not to exceed \$13,500,0000 (the Refunding Certificates), said principal amount to be such amount as is necessary to provide funds to refinance the acquisition, construction and installation of various capital improvements in the Balboa Park and Mission Bay Park Capital Improvements Program (the "Project") as more particularly described below.

Section 2. Description of the Project. The Project to be refinanced by the execution and delivery and sale of the Refunding Certificates is located on real property owned by the City. With respect to the Refunding Certificates, the City has determined to refinance its Certificates of Participation (Balboa

Park and Mission Bay Park Capital Improvements Program) Series 1991 (the "Refunded Certificates") which were issued in the aggregate principal amount of \$11,810,000, the proceeds of which were applied to the acquisition, construction and installation of various capital improvements in the Balboa Park and Mission Bay Park Capital Improvements Program, as more particularly described in the Facilities Lease, dated as of July 15, 1991, by and between the City and the Corporation.

Section 3. Source of Revenue For Payment of Refunding Certificates. The anticipated source of revenue for payment of the Refunding Certificates hereby authorized is the base lease payments to be made by the City to the Corporation under the Facilities Lease (as more particularly described below).

Section 4. Authorization and Approval of Site and Facilities Lease. The form and content of the Site and Facilities Lease, tentatively dated as of July 1, 1996 (the "Site Lease"), respecting the site and facility to be leased by the City to the Corporation with respect to the Refunding Certificates, a copy of which is before this Council and on file in the office of the City Clerk as Document No. 0-18289-1 is hereby approved. The City Manager is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the Site and Facilities Lease in substantially the form presented to and considered at this meeting, and the City Clerk of the City is authorized to attest thereto, with such additions and changes therein as the City Manager shall approve as being in the best interests of the City, and as approved as to form by the City Attorney, such approval to be conclusively evidenced by the

City Manager's execution and delivery of said Site and Facility Lease, which form of Site and Facilities Lease is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 5. Authorization and Approval of Facility Lease.

The form and content of the Facility Lease, tentatively dated July 1, 1996 (the "Facilities Lease"), respecting lease payments to be made by the City with respect to the Refunding Certificates, a copy of which is before this Council and on file in the office of the City Clerk as Document No. 00-18289-2, is hereby approved. The City Manager is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the Facility Lease in substantially the form presented to and considered at this meeting, and the City Clerk of the City is authorized to attest thereto, with such additions and changes therein as the City Manager shall approve as being in the best interests of the City, and as approved as to form by the City Attorney, and with such other changes that may be required by nationally recognized bond counsel in order to maintain the exclusion from gross income of the interest evidenced and represented by the Refunding Certificates, such approval to be conclusively evidenced by the City Manager's execution and delivery of said Facility Lease, which form of Facilities Lease is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 6. Authorization and Approval of Trust Agreement. To provide for the issuance and sale of the Refunding Certificates, the City hereby authorizes and approves of the

execution, delivery and performance of the Trust Agreement related to the execution and delivery of the Refunding Certificates, tentatively dated as of July 1, 1996 (the "Trust Agreement"), by and among the City, the Corporation and the Trustee named therein (the "Trustee"), in substantially the form presented to and considered at this meeting copies of which are before this Council and on file in the office of the City Clerk as Document No. 00-18289-3, with such additions and changes therein as the City Manager shall approve as being in the best interests of the City, and as approved as to form by the City Attorney, and with such other changes that may be required by nationally recognized bond counsel in order to maintain the exclusion from gross income of the interest evidenced and represented by the Refunding Certificates, such approval to be conclusively evidenced by the City Manager's execution and delivery of said Trust Agreement, which form of Trust Agreement is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 7. Authorization and Approval of Assignment Agreement. The City hereby approves the form of Assignment Agreement related to the execution and delivery of the Refunding Certificates, tentatively dated as of July 1, 1996 (the "Assignment Agreement"), by and between the Corporation and Trustee in substantially the form presented to and considered at this meeting as Exhibit A.

Section 8. Authorization and Approval of Escrow Agreement. In connection with the execution and delivery of the Refunding Certificates, the City hereby authorizes and approves

of the execution and delivery of the Escrow Agreement (the "Escrow Agreement"), tentatively dated as of July 1, 1996, by and between the City and the Escrow Agent named therein, as Escrow Agent, related to the refunding of the Refunded Certificates, in substantially the form presented to and considered at this meeting a copy of which is before this Council and on file in the office of the City Clerk as Document No. 00-18289-4, with such additions and changes therein as the City Manager shall approve as being in the best interests of the City, and as approved as to form by the City Attorney, and with such other changes that may be required by nationally recognized bond counsel in order to maintain the exclusion from gross income of the interest evidenced and represented by the Refunded Certificates, such approval to be conclusively evidenced by the City Manager's execution and delivery of said Escrow Agreement, which form of Escrow Agreement is hereby in all respects approved and incorporated by reference and made a part hereof. The City Manager is hereby directed for and on behalf of the City, in consultation with the Financial Advisor, to solicit bids with respect to the Government Obligations to be deposited in the escrow fund in order to effectuate the defeasance of the Refunded Certificates.

Section 9. Authorization and Approval of Forward Supply Agreement. In connection with the execution and delivery of the Refunding Certificates, the City hereby approves the form of Forward Supply Agreement (the "Forward Supply Agreement"), tentatively dated as of July 1, 1996, by and between the Trustee named therein, a supplier to be named therein (the "Supplier")

related to the refunding of the Refunded Certificates (the "Forward Supply Agreement"), in substantially the form presented to and considered at this meeting as Exhibit B. The City Manager is hereby directed for and on behalf of the City, in consultation with the Financial Advisor, to solicit bids with respect to the purchase of Qualified Federal Securities (as defined therein) for the purposes set forth in said Forward Supply Agreement.

Section 10. Sale of the Refunding Certificates--Competitive Bid. It is contemplated that the Refunding Certificates will be sold through a competitive bid process. In the event of a competitive bid, the Refunding Certificates shall bear interest at the rates established by offering the Refunding Certificates at public sale pursuant to the Notice of Intention to Sell Certificates, the Official Notice of Sale and the Official Bid Form (which documents are hereby approved by the City in substantially the forms attached hereto as Exhibits B, C and D, respectively, and with such changes as the City Manager may deem to be in the best interests of the City) to be prepared by the City's Financial Advisor, subject to the approval the City Manager and City Attorney, in consultation with the City's Bond Counsel. The forms of said Financing Documents to be approved by resolution of this Council. The City Manager is hereby authorized and directed to cause the publication of the Notice of Intention to Sell Certificates at least fifteen (15) days prior to the sale of the Refunding Certificates and the distribution of said Preliminary Official Statement. The City Manager is hereby further authorized and directed to solicit the lowest responsible bid for the Refunding Certificates in accordance with the terms of the

Official Notice of Sale, and thereafter to accept the bid of the lowest responsible bidder for the Refunding Certificates within seven hours after the opening of the bids, and no later than 5:00 p.m., San Diego time, on the date of sale, as prescribed in the Official Notice of Sale. The City Manager is hereby authorized, for and on behalf of the City, to determine whether to request bids for the sale of the Refunding Certificates.

Section 11. Authorization and Approval of Preliminary and Final Official Statement. The Preliminary Official Statement ("Preliminary Official Statement"), a copy of which is before this Council and is on file in the office of the City Clark as Document No. 00-18289-5, is hereby approved for use in connection with the public offering of the Refunding Certificates, with such changes as may be approved by the City Manager, the City Attorney or Kitahata & Company, the City's financial advisor (the "Financial Advisor"), which form of Preliminary Official Statement is hereby in all respects approved and incorporated by reference and made a part hereof. The City Manager is authorized to certify to the underwriter or underwriters of the Refunding Certificates (the "Underwriter") on behalf of the City that the Preliminary Official Statement is deemed final as of its date within the meaning of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the "Rule") (except for the omission of certain final pricing, rating and related information as permitted by the Rule). The City Manager is authorized to execute and deliver a final official statement relating to the Refunding Certificates (the "Official Statement") in substantially the form of said Preliminary

Official Statement, with such additions and changes as the City Manager shall approve as being in the best interests of the City, such approval to be conclusively evidenced by the execution of said Official Statement. The City Manager is authorized and directed to cause the printing and delivery of the Preliminary Official Statement and the Official Statement. The City's Financial Advisor and the underwriter or underwriters are hereby authorized to distribute copies of the Preliminary Official Statement and the Official Statement to prospective purchasers of the Refunding Certificates and all actual purchasers of the Refunding Certificates from the underwriter or underwriters acting in such capacity.

Section 12. Sale of the Refunding Certificates -- Negotiated Sale. From and after the date hereof, and until the date bids are received, the City Manager is hereby authorized to make a decision regarding the method of sale for the Refunding Certificates that would be in the best interests of the Corporation and the City. If, in the judgment of the City Manager, a negotiated sale of the Refunding Certificates would be in the best interests of the Corporation or the City, the City Manager shall issue a request for proposal and provide the Corporation and the City Council with a recommended underwriter and a proposed form of Purchase Contract with that underwriter.

Section 13. Authorization and Approval of Continuing Disclosure Agreement. The form and content of the Continuing Disclosure Agreement, tentatively dated as of July 1, 1996 (the "Disclosure Agreement"), by and between the City and the Trustee to be named therein, pursuant to which the City is obligated to

make secondary market disclosure, a copy of which is before this Council and is on file in the office of the City Clerk as Document No. 00-18289-6 is hereby approved. The City Manager of the City is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the Disclosure Agreement in substantially the form presented to and considered at this meeting, and the City Clerk of the City is authorized to attest thereto, with such additions and changes therein as the City Manager shall approve as being in the best interests of the City, and is approved as to form by the City Attorney, such approval to be conclusively evidenced by the City Manager's execution and delivery of said Disclosure Agreement, which form of Disclosure Agreement is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 14. Ratification of Actions. All actions heretofore taken by any officers, employees or agents of the City with respect to the issuance, execution, delivery or sale of the Refunding Certificates, or in connection with or related to any of the agreements or documents referenced herein, are hereby approved, confirmed and ratified.

Section 15. Designated Officer; General Authorization. The City Manager of the City or his designee, any Deputy City Manager of the City, the City Attorney, any Deputy City Attorney, the City Clerk and any Assistant City Clerk of the City (each, a "Designated Officer"), and each of them acting alone or together, are hereby authorized and directed, for and in the name of and on behalf of the City, to take such actions, and to execute such documents and certificates as may be necessary to effectuate the

purposes of this Ordinance.

Section 16. Notice of Public Hearing. The City Clerk shall cause notice of the public hearing to be held on Apr. 15, 1996, at 2:00 P.m. at the regular meeting place of the City Council of the City, on the approval of the Facility Lease, Escrow Agreement, Forward Supply Agreement, Trust Agreement, Assignment Agreement, Preliminary Official Statement, Official Statement and Disclosure Agreement, and the execution and delivery of the Refunding Certificates, to be published at least ten (10) days in advance of such public hearing in the San Diego Daily Transcript, a daily newspaper of general circulation, published and circulated in the City of San Diego, as required by Section 99 of the City Charter.

Section 17. Notice of Adopting of Ordinance. The City Clerk is hereby directed to cause publication of notice of the adoption of this Ordinance for five (5) consecutive days in the San Diego Daily Transcript, a daily newspaper of general circulation published and circulated in the City/County of San Diego, as required by California Government Code Section 6040.1, within fifteen (15) days from the passage hereof pursuant to California Government Code Section 6547.2.

Section 18. Referendum; Effective Date. This Ordinance is subject to the provisions for referendum contained in Section 27.2601 et seq. of the San Diego Municipal Code. Subject to those provisions, this Ordinance shall take effect and be in force thirty (30) days from the date of its adoption and, prior to the expiration of fifteen (15) days from the passage hereof, the City Clerk shall cause this Ordinance to be published at

least once in the San Diego Daily Transcript, a daily newspaper of general circulation, published and circulated in the City of San Diego.

Section 19. Title Insurance. The City Manager is hereby authorized to make necessary arrangements with an appropriate title insurance company to issue a title insurance bidder with respect to land that may become the subject of the Facilities Leases and to execute any agreement required for retention of such title insurance company or companies.

Section 20. Verification Agent. The City Manager is hereby authorized to make necessary arrangements with an appropriate public accounting firm to obtain a report to the effect that the amount deposited in the Escrow Agreement is sufficient to pay when due the principal and interest evidenced and represented by the Refunded Certificates to the redemption date thereof.

Section 21. This Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By Theresa C. McAteer
Theresa C. McAteer
Deputy City Attorney

TCM:smf
03/18/96
Or.Dept:Fin.Mgmt.
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