

(O-98-34)
(Cor. Copy)

ORDINANCE NUMBER O- 18443 (NEW SERIES)

ADOPTED ON NOV 25 1997, 1997

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING AND APPROVING THE EXECU-
TION AND DELIVERY OF CERTIFICATES OF PARTICI-
PATION, MAKING POSSIBLE THE EXPANSION OF THE
SAN DIEGO CONVENTION CENTER

WHEREAS, the existing Convention Center is the cornerstone of San Diego's visitor industry, is a major producer of employment, and infuses \$580 million annually into the regional economy of the San Diego region; and

WHEREAS, the City's financial obligation towards the construction of the expansion to the Convention Center will be paid for by taxes permitted to be collected from persons staying in hotels; and

WHEREAS, numerous large conventions cannot be accommodated because of the size limitations of the existing center and are being lost to Anaheim, San Francisco, Las Vegas and other competing cities which have larger convention centers; and

WHEREAS, the proposed expansion of the Convention Center will increase the regional economic benefit to \$1 billion and create 4,700 jobs for our local economy; and

WHEREAS, on June 21, 1994, the City and the San Diego Unified Port District ("District") entered into a Memorandum of Understanding respecting the expansion of the San Diego Convention Center ("Expansion Project"); and

WHEREAS, to accomplish the construction of the Expansion Project, the City entered into certain agreements with the Convention Center Expansion Financing Authority ("Financing Authority") whereby the District would lease the existing Convention Center and the Expanded Center to the Financing Authority, the Financing Authority would issue lease revenue bonds to finance the construction of the Expansion Project and would award a construction contract, and the Financing Authority would then lease the Existing Center and Expanded Center to the City for a consideration sufficient to pay the debt financing on the lease revenue bonds; and

WHEREAS, the lease revenue financing mechanism, and the ability of the Financing Authority to utilize that mechanism, have been challenged in court by Richard Rider and others ("Rider v. City"); and

WHEREAS, the California Supreme Court has granted Rider's petition for review and will decide the merits of Rider v. City, with an argument date not yet set by the Court; and

WHEREAS, the delay occasioned by Rider v. City is causing the cost of the Expansion project to rise at an estimated rate of \$750,000 per month; and

WHEREAS, the City and the District still desire to proceed with the Expansion Project, and have agreed upon an alternative financing mechanism to accomplish this end; and

WHEREAS, it is the express intention of the City Council that any documents attached as Exhibits hereto, incorporated herein by reference or on file in the Office of the City Clerk, pursuant to state law comprise, together with the text of this Ordinance, the full action of the Council and are necessary for a full understanding of the Council's actions; NOW, THEREFORE,

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

Section 1. Authorization and Approval of the Certificates. The City hereby has determined to authorize and approve the execution and delivery of Certificates of Participation (San Diego Convention Center Expansion) Series 1998A (the "Certificates"), in an aggregate principal amount not to exceed \$210,000,000, said principal amount to provide funds to finance the construction of the Expansion Project as more particularly described below.

Section 2. Description of the Project. The Expansion Project to be financed by the execution and delivery and sale of the Certificates will be located on real property owned by the District. The District has agreed to lease to the City : (i) the existing San Diego Convention Center, and (ii) the Expansion Project, including the real property to be developed in connection with the Expansion Project, together with improvements thereon (the "Facilities"), pursuant to the terms of a Facility Lease (as described below).

Section 3. Source of Revenue For Payment of Certificates. The anticipated source of revenue for payment of the Certificates hereby authorized is the base rental payments to be made by the City to the District under the Convention Center Facility Lease (the "Facility Lease," as more particularly described below).

Section 4. Additional Source of Revenue for Payment of Certificates. Another source of revenue for the payment of the Certificates will be support payments to be made by the District to the City under a Support Agreement, tentatively dated as of March 5, 1996 (the "Support Agreement") between the District and the City. Pursuant to the Support Agreement, the District will pay to the City the sum of \$4.5 million each year for eighteen (18) consecutive years.

Section 5. Authorization and Approval of Facility Lease. The form and content of the Facility Lease, tentatively dated as of January 1, 1998, respecting base rental payments to be made by the City with respect to the Certificates, a copy of which is before this Council and on file in the office of the City Clerk as Document No. 00-18443-1, 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 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 Certificates, such approval to be conclusively evidenced by the City Manager's execution and delivery of the Facility Lease, which form of Facility 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 execution and delivery of the 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 Certificates, tentatively dated as of January 1, 1998 (the "Trust Agreement"), by and among the City, the District and the Trustee to be named therein (the "Trustee"), 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. 00-18443-2, 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 Certificates, such approval to be conclusively evidenced by the City Manager's execution and delivery of the 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 Certificates, tentatively dated as of January 1, 1998 (the "Assignment Agreement"), by and between the District and Trustee in substantially the form presented to and considered at this meeting as Exhibit A.

Section 8. Amendment of the First Amended and Restated Management Agreement. The existing Convention Center is currently operated by the City through a Convention Center Management Agreement between the City and the District. A First Amended and Restated Management Agreement was approved by the City Council and the District's Board of Port Commissioners on March 5, 1996. The parties have now agreed to enter into a 1997 Management Agreement (the "1997 Management Agreement"), which shall supersede the First Amended and Restated Management Agreement.

Section 9. Authorization and Approval of 1997 Management Agreement. The form and content of the 1997 Management Agreement between the City and the District, whereby the City will manage, operate and maintain the existing and expanded Convention Center, a copy of which is before this Council and is on file in the office of the City Clerk as Document No.

00-18443-3 , 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 1997 Management Agreement in substantially the form presented to and considered at this meeting, and the 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 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 1997 Management Agreement, which form of said 1997 Management Agreement is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 10. Delegation of Selection of Underwriters. The City Manager is hereby authorized to select a group of investment banking firms to act as the underwriters of the Certificates.

Section 11. Approval of Form of Certificate Purchase Contract. Subject to the selection of underwriters, the form of Certificate Purchase Contract presented to this meeting is hereby approved, and the City Manager is hereby authorized and directed to execute the same for and in the name and on behalf of the City, with such 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 his execution and delivery thereof; provided, however, that the aggregate principal amount of Certificates which may be issued shall not exceed \$210,000,000.

Section 12. Status of Lease Revenue Financing for the Convention Center Expansion. Except as expressly provided herein, nothing in this ordinance, or in the documents and actions

authorized and approved hereby, supersedes or nullifies the actions taken by the Council in adopting Ordinance Nos. O-18270 and O-18271, authorizing and approving the use of lease revenue financing for the Expansion Project. It is the intent of the Council that if the California Supreme Court rules in favor of the City in Rider v. City, then the City shall have the option, at its discretion, to finance the Expansion Project through the lease revenue mechanism already approved by O-18270; provided, however, that notwithstanding the provisions in O-18270 regarding a negotiated sale, the City Manager be and he is hereby authorized: a) to make such changes and amendments to the Certificate Purchase Contract, herein approved, as are necessary to proceed with a negotiated sale of the lease revenue bonds, and b) to use the underwriter selected for the negotiated sale of the Certificates, or alternatively to select another underwriter, for the sale of the lease revenue bonds.

Section 13. Ratification of Actions. All actions heretofore taken by any officers, employees or agents of the City with respect to the execution, delivery or sale of the Certificates, or in connection with or related to any of the agreements or documents referenced herein, are hereby approved, confirmed and ratified.

Section 14. 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 15. Notice of Public Hearing. The City Clerk shall cause notice of the public hearing to be held on November 10, 1997, at 10:00 a.m. at the regular meeting place of the City Council of the City, on the approval of the Facility Lease, Trust Agreement and 1997 Management Agreement, and the execution and delivery of the 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 16. 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 17. 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 18. 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 Facility Lease and to execute any agreement required for retention of such title insurance company or companies.

Section 19. This Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Theresa C. McAteer
Deputy City Attorney

TCM:
11/24/97
Or.Dept:Mgr.
O-98-34
(Cor.Copy)

Recording Requested By)
And When Recorded Mail To:)
Paul A. Webber)
ORRICK, HERRINGTON & SUTCLIFFE LLP)
777 South Figueroa Street)
Suite 3200)
Los Angeles, California 90017)

OH&S
DRAFT #1
10/9/97

(space above for Recorder's use)

ASSIGNMENT AGREEMENT

by and between

SAN DIEGO UNIFIED PORT DISTRICT

and

BNY WESTERN TRUST COMPANY,
as Trustee

Dated as of January 1, 1998

RELATING TO THE \$ _____
CERTIFICATES OF PARTICIPATION
(SAN DIEGO CONVENTION CENTER EXPANSION)
SERIES 1998A
EVIDENCING PROPORTIONATE UNDIVIDED INTERESTS
IN THE CITY OF SAN DIEGO BASE RENTAL PAYMENTS

RECEIVED
97 OCT 21 PM 1:30
CITY CLERKS OFFICE
SAN DIEGO, CA

EXHIBIT A

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (the "Assignment Agreement"), dated as of January 1, 1998, between the SAN DIEGO UNIFIED PORT DISTRICT, a public entity and agency duly organized and existing under and by virtue of the laws of the State of California (the "District"), as lessor, and BNY WESTERN TRUST COMPANY, a corporation organized and existing as a state banking corporation under the laws of the State of California (the "Trustee");

W I T N E S S E T H:

WHEREAS, the City of San Diego (the "City") and the District desire to finance the construction of an expansion (the "Expansion Project") to the existing Convention Center currently operated by the City;

WHEREAS, in connection therewith, the City and the District have executed the Convention Center Facility Lease, dated as of January 1, 1998 (the "Facility Lease"), whereby the District has agreed to lease to the City certain real property and improvements thereon or to be located thereon (the "Leased Property");

WHEREAS, under and pursuant to the Facility Lease, the City is obligated to make base rental payments to the District;

WHEREAS, the City and the District will enter into a Trust Agreement, dated as of January 1, 1998 (the "Trust Agreement"), with the Trustee (the "Trust Agreement"), and the District will enter into this Assignment Agreement for said financing; and

WHEREAS, it is contemplated that certificates of participation (the "Certificates") evidencing proportionate undivided interests of the holder thereof in rental payments under the Facility Lease be executed and delivered pursuant to the Trust Agreement and the proceeds thereof be used to finance the Expansion Project; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Assignment Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Assignment Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

SECTION 1. Assignment. The District, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby unconditionally grant, transfer and

assign to the Trustee without recourse (i) all rights of the District to receive the Base Rental Payments scheduled to be paid by the City under and pursuant to the Facility Lease for the benefit of the Owners of the Certificates, (ii) all rents, profits and products from the Leased Property (as defined in the Facility Lease) to which the District has any right or claim whatsoever under the Facility Lease, (iii) the right to take all actions and give all consents under the Facility Lease, (iv) the right of access more particularly described in the Facility Lease and (v) any and all other rights and remedies of the District in the Facility Lease as lessor thereunder for the purpose of (a) paying all sums due and owing to the Owners of the Certificates under the terms of the Trust Agreement; and (b) performing and discharging each agreement, covenant and obligation of the City contained in the Facility Lease and in the Trust Agreement.

SECTION 2. Acceptance. The Trustee hereby accepts the foregoing assignment for the benefit of the Owners of the Certificates, subject to the conditions and terms of the Trust Agreement, and all such Base Rental Payments shall be applied and all such rights so assigned shall be exercised by the Trustee as provided in the Trust Agreement.

SECTION 3. Conditions. This Assignment Agreement shall confer no rights and shall impose no obligations upon the Trustee beyond those expressly provided in the Trust Agreement. The Trustee shall not be responsible for the accuracy of the recitals herein. The Trustee is entering into this Assignment Agreement solely in its capacity as Trustee under the Trust Agreement and not in its individual or personal capacity. The Trustee is not responsible for the duties or obligations of the District under the Facility Lease or for any recitals, covenants, representations or warranties of the District thereunder.

SECTION 4. Payment of Rentals. Upon payment or provision for payment to the Trustee in full of all Base Rental Payments as described in the Facility Lease and of all other amounts, including any additional rental or other amounts owed by the City under the Facility Lease or the Trust Agreement, the Assignment Agreement shall become and be void and of no effect with respect to the Facility Lease and when the Certificates are no longer Outstanding (as defined in the Trust Agreement), and the Trustee shall execute any and all documents or certificates reasonably requested by the District to evidence the termination of the Assignment Agreement with respect to the Facility Lease.

SECTION 5. Counterparts. This Assignment Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

SECTION 6. Governing Law. This Assignment Agreement is made in the State of California under the Constitution and laws of the State of California and is to be so construed.

SECTION 7. Severability. If any agreement, condition, covenant or term hereof or any application hereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, all agreements, conditions, covenants and terms hereof and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Assignment Agreement by their officers thereunder duly authorized as of the day and year first above written.

SAN DIEGO UNIFIED PORT DISTRICT

By _____
Authorized Officer

ATTEST:

Secretary

BNY WESTERN TRUST COMPANY, as Trustee

By _____
Authorized Officer

CALIFORNIA ALL-PURPOSE NOTARY ACKNOWLEDGMENT

State of California

County of _____

On this _____ day of _____, 199____, before me,

_____ personally appeared _____

Name, Title of Officer

Name(s) of Signer(s)

personally known to me - **OR** - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

*** OPTIONAL SECTION *** CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document

- INDIVIDUAL
- CORPORATE OFFICERS(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
-

OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

***** OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

TITLE OR TYPE OF DOCUMENT _____

NUMBER OF PAGES _____ DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CALIFORNIA ALL-PURPOSE NOTARY ACKNOWLEDGMENT

State of California
County of _____

On this _____ day of _____, 199____, before me,

Name, Title of Officer
personally appeared _____
Name(s) of Signer(s)

personally known to me - **OR** - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

***** OPTIONAL SECTION ***
CAPACITY CLAIMED BY SIGNER**

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- INDIVIDUAL
- CORPORATE OFFICERS(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
-

OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

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