

ORDINANCE NUMBER O- 18680 (NEW SERIES)

ADOPTED ON SEP 14 1999

AN ORDINANCE PURSUANT TO SECTION 99 OF THE CHARTER OF THE CITY OF SAN DIEGO APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST AGREEMENT, AN AMENDMENT NO. 1 TO SITE AND FACILITIES LEASE, AN AMENDMENT NO. 1 TO FACILITIES LEASE, AND A SURETY AGREEMENT FOR THE CERTIFICATES OF PARTICIPATION (BALBOA PARK AND MISSION BAY PARK CAPITAL IMPROVEMENTS PROGRAM) SERIES 1996A, AND APPROVING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the San Diego Facilities and Equipment Leasing Corporation (the "Corporation"), is a nonprofit public benefit corporation duly organized and existing under the laws of the State of California; and

WHEREAS, The City of San Diego (the "City") desires to acquire, construct, install, renovate, and improve or cause the acquisition, construction, installation, renovation, and improvement of Balboa Park and Mission Bay Park (the "Project"), and in furtherance of such desire the City authorized the execution and delivery of Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program) Series 1996A (the "1996A COPs") in an aggregate principal amount of \$33,430,000; and

WHEREAS, the Project is financed by the execution and delivery and sale of the 1996A COPs and is located on real property owned by the City and in connection therewith the City agreed to lease to the Corporation property described as the South Torrey Pines Golf Course,

together with improvements thereon (the "Facilities"), pursuant to the terms of a site and facilities lease (the "Site and Facilities Lease"); and

WHEREAS, pursuant to a Facilities lease (the "Facilities Lease") the Corporation leases the Facilities back to the City; and

WHEREAS, the Corporation established a trust pursuant to a trust agreement (the "Trust Agreement"), dated as of July 1, 1996, by and among the City, BNY Western Trust Company, as trustee (the "Trustee"), and the Corporation directed the Trustee to execute and deliver certificates representing proportionate interests in the lease payments to be made by the City to the Corporation pursuant to the Facilities Lease; and

WHEREAS, pursuant to the Trust Agreement the City has deposited funds into a debt service reserve account (the "Reserve Account"); and

WHEREAS, the City desires to use the funds deposited in the Reserve Account for certain capital expenses related to the Project; and

WHEREAS, pursuant to the Trust Agreement, the funds on deposit in the Reserve Account may be substituted by a surety policy; and

WHEREAS, in order to use the funds on deposit in the Reserve Account it is proposed that a surety bond (the "Surety") be substituted for the funds on deposit in the Reserve Account; and

WHEREAS, in order to provide for the substitution of the Surety, it is proposed that the City, the Corporation, and the Trustee enter into a supplemental trust agreement (the "Supplemental Trust Agreement"), a copy of which is on file in the office of the City Clerk as Document No. OO- 18680, amending and supplementing the Trust Agreement; and

WHEREAS, in order to provide for the substitution of the Surety, it is proposed that the City and the Corporation enter into the following agreements:

(1) A first amendment to the Site and Facilities Lease (the "Amendment No. 1 to Site and Facilities Lease"), a copy of which is on file in the Office of the City Clerk as Document No. OO- 18680 -2; and

(2) A first amendment to the Facilities Lease (the "Amendment No. 1 to Facilities Lease"), a copy of which is on file in the Office of the City Clerk as Document No. OO- 18680 -3; and

WHEREAS, AMBAC Assurance Corporation ("AMBAC") has proposed to provide the City with the Surety under the terms and conditions provided in a surety agreement (the "Surety Agreement"), a copy of which is on file in the Office of the City Clerk as Document No. OO- 18680 -4 and it is proposed that the City enter into such Surety Agreement; and

WHEREAS, there has been presented to this Council of the City the forms of the Supplemental Trust Agreement, the Amendment No. 1 to Site and Facilities Lease, the Amendment No. 1 to Facilities Lease, and the Surety Agreement, and the Council of the City has examined such documents and desires to approve such documents and to authorize and direct the execution thereof; and

WHEREAS, the City is authorized to undertake all of the above pursuant to its Charter and the Constitution and other applicable laws of the State of California, NOW, THEREFORE,

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

Section 1. That the statements set forth above in the recitals are true and correct.

Section 2. That the form, terms and provisions of the Supplemental Trust Agreement by and among the City, the Corporation, and the Trustee submitted to this meeting are hereby

approved, and the City Manager and his respective specified designees and each of them, are hereby authorized and directed, for and in the name and on behalf of the City to execute and deliver the Supplemental Trust Agreement in substantially the form presented to this meeting, and the City Clerk or his respective specified designee is each authorized to attest thereto, with such additions and changes therein as the City Manager or his respective specified designees shall require or approve as being in the best interests of the City, such approval to be conclusively evidenced by the execution and delivery thereof with such additions or changes, and as approved as to form by the City Attorney or his specified designee.

Section 3. That the form, terms and provisions of the Amendment No. 1 to Site and Facilities Lease by and between the City and the Corporation, submitted to this meeting are hereby approved, and the City Manager and his respective specified designees and each of them, are hereby authorized, and directed, for and in the name of and on behalf of the City, to execute and deliver the Amendment No. 1 to Site and Facilities Lease in substantially the form presented to this meeting, and the City Clerk or his specified designee is each authorized to attest thereto, with such additions and changes therein as the City Manager or his respective specified designees shall require or approve as being in the best interests of the City, such approval to be conclusively evidenced by the execution and delivery of the Amendment No. 1 to Site and Facilities Lease with such additions or changes, and as approved as to form by the City Attorney or his respective specified designee.

Section 4. That the form, terms, and provisions of the Amendment No. 1 to Facilities Lease, by and between the City and the Corporation, submitted to this meeting are hereby approved, the City Manager and his respective specified designees and each of them, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the

Amendment No. 1 to Facilities Lease in substantially the form presented to this meeting, and the City Clerk or his specified designee is each authorized to attest thereto, with such additions and changes therein as the City Manager or his respective designees shall require or approve as being in the best interests of the City, such approval to be conclusively evidenced by the execution and delivery thereof with such additions or changes, and as approved as to form by the City Attorney or his respective specified designee.

Section 5. That the forms, terms, and provisions of the Surety Agreement, by and between the City and AMBAC, submitted to this meeting are hereby approved, the City Manager and his respective specified designees and each of them, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Surety Agreement in substantially the form presented to this meeting, and the City Clerk is authorized to attest thereto, with such additions and changes therein as the City Manager or his respective designees shall require or approve as being in the best interests of the City, such approval to be conclusively evidenced by the execution and delivery thereof with such additions or changes, and approved as to form by the City Attorney or his respective specified designee.

Section 6. That the expenditure of an amount not to exceed \$150,000 from Fund 91107, Dept. 91107, Acct. 4810, J.O. 000003, is hereby authorized, solely and exclusively for the purpose of providing funds to acquire the Surety Agreement.

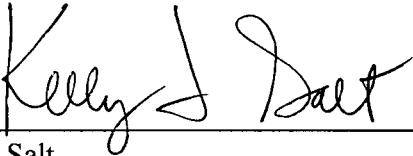
Section 7. All actions heretofore taken by any officer or officers of the City, with respect to the substitution of the Surety, or in connection with or related to any of the agreements referenced herein or the financing of the Project are hereby approved, confirmed and ratified; and such other officials of the City as may be authorized by the City Manager are, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the City, to

do any and all things and to take any and all actions, and to execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable to effectuate the purposes of this Ordinance, and approved as to form by the City Attorney or his specified designee and with such other changes that may be required, such approval to be conclusively evidenced by such officers's execution and delivery thereof.

Section 8. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 9. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Kelly J. Salt
Deputy City Attorney

KJS:pev
7/13/99
Or.Dept:Fin.&Tech.Svcs.
Aud.Cert:2000061
O-2000-13
Form=o&t.frm

**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

CERTIFICATE OF UNALLOTTED BALANCE

AC 2000061
ORIGINATING DEPT. NO.: 056

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount \$ _____ Fund _____

Purpose _____

Date _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed \$ 200,000.00

Vendor AMBAC Assurance Corporation

Purpose Authorizing the expenditure of funds for the projected cost and related services involving the

Surety Substitution for the Series 1996A and 1996B COP (Balboa Park & Mission Bay Park CIP).

Date July 13, 1999 By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	91107	91107		4810	000003				\$200,000.00
TOTAL AMOUNT										\$200,000.00

FUND OVERRIDE

AC-361 (REV 2-92)

AC 2000061

0-18680

SEP 14 1999