

(O-2001-56)

ORDINANCE NUMBER O- 18869 (NEW SERIES)

ADOPTED ON OCT 16 2000

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORM OF AND AUTHORIZING EXECUTION AND DELIVERY OF A SECOND AMENDMENT TO LEASE AGREEMENT, CERTAIN CONVEYANCES BY QUITCLAIM DEED AND APPROVING CERTAIN ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City has caused the execution and delivery of \$63,330,000 City of San Diego Refunding Certificates of Participation (Police Capital Improvements Projects) (the "Prior Obligation") pursuant to that certain Trust Agreement, dated as of May 1, 1986 (the "Trust Agreement"), by and among BNY Western Trust Company, as successor trustee to Bank of America National Trust and Savings Association (the "Trustee"), the City of San Diego/MTDB Authority (the "Corporation"), as successor in interest to Rauscher Pierce Refsnes Leasing, Inc. ("Rauscher"), and the City; and

WHEREAS, the lease payments payable under that certain Lease Agreement, dated as of May 1, 1986, by and between the City and the Corporation, as lessor and as successor in interest thereunder to Rauscher, as lessor, which was recorded on June 18, 1986, as Instrument No. 86-244207 in the Official Records of the County of San Diego, California (the "1986 Lease"), provided revenues to pay debt service with respect to the Prior Obligation; and

WHEREAS, the City refunded a portion of the Prior Obligation and other obligations of the City in connection with the issuance of its City of San Diego/MTDB Lease Revenue Bonds (1994 Refundings) (the "1994 Bonds") in the aggregate principal amount of Sixty-Six Million,

Five Hundred Seventy Thousand Dollars (\$66,570,000) issued pursuant to that certain Indenture, dated as of April 1, 1994 (the "Indenture"), by and between the Corporation and BNY Western Trust Company, in its capacity as trustee under the Indenture (the "Refunding Bonds Trustee"); and

WHEREAS, in connection with the issuance of the 1994 Bonds, the City determined that it was necessary and desirable to amend the 1986 Lease to divert a portion of the lease payments payable thereunder to provide a portion of the revenues to pay debt service with respect to the 1994 Bonds; and

WHEREAS, in order to effect such refunding and to amend the 1986 Lease, the City and the Corporation entered into the First Amendment to Lease amending the 1986 Lease (the 1986 Lease, as so amended, is hereinafter referred to as the "1994 Lease"); and

WHEREAS, the 1994 Bonds are payable, in part, from the lease payments to be made by the City pursuant to the 1994 Lease; and

WHEREAS, the portion of the Prior Obligation not refunded by the 1994 Bonds is also no longer outstanding; and

WHEREAS, under that certain Assignment Agreement of Lease and of Site Leases, dated as of May 1, 1986, by and between Rauscher and the Trustee, as amended by that certain First Amendment to Assignment Agreement of Lease and of Site Leases, dated as of April 1, 1994, by and among the Corporation, as successor in interest to Rauscher, the Trustee and the Refunding Bonds Trustee (as so amended, the "Assignment Agreement") the Corporation assigned certain of its rights under the 1994 Lease to the Trustee and the Refunding Bonds Trustee; and

WHEREAS, the real property commonly known as the Police Heavy Vehicle Maintenance Facility, which is described under the heading "Heavy Vehicle Maintenance Facility Project" in

Exhibit B to the 1994 Lease excluding the Old Project, as described below, (the "Old Site"), is among the Sites leased pursuant to the 1994 Lease, and the improvements, facilities and property situated on the Old Site (the "Old Project," which, together with the Old Site, is hereinafter referred to as the "Old Facility") is a Project leased pursuant to the 1994 Lease; and

WHEREAS, the City has determined that it is necessary and desirable to use the Old Facility for municipal purposes other than those municipal purposes served by its current use; and

WHEREAS, the City has determined that it is necessary and desirable to amend the 1994 Lease to exclude the Old Facility and include the real property described under the heading "Southern Division Police Station" in Exhibit B to the Second Amendment to Lease excluding the New Project, as defined below, (the "New Site"), and the improvements, facilities and property situated on the New Site (the "New Project," which, together with the New Site, is hereinafter referred to as the "New Facility"); and

WHEREAS, in order to remove the Old Facility from the Sites and Projects (as such terms are defined in the 1994 Lease) subject to the 1994 Lease, it is necessary for the Corporation to convey the Old Facility to the City and for the City to accept such conveyance; and

WHEREAS, in order to add the New Facility to the Sites and Projects subject to the 1994 Lease, it is necessary for the City to convey the New Facility to the Corporation and for the Corporation to accept such conveyance; and

WHEREAS, the Sites and Projects described in the 1994 Lease, other than the New Site and the New Project, have a current value equal to or greater than the principal components of lease payments remaining and payable in the future under the 1994 Lease respectively attributable to them, and the New Facility has an appraised value of at least 120 percent of such lease payments attributable under the 1994 Lease to the Old Facility; and

WHEREAS, the New Facility is equally or more essential to the City's municipal purposes and activities as is the Old Facility; and

WHEREAS, the New Facility's ability to withstand seismic disruption is equal to or better than that of the Old Facility; and

WHEREAS, the transaction contemplated hereby will not adversely affect the interests of the owners of the 1994 Bonds; NOW, THEREFORE,

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

Section 1. That the recitals herein above set forth are true and correct, and the City Council so finds.

Section 2. That the form of Second Amendment to Lease Agreement (the "Second Amendment to Lease"), by and between the City and the Corporation, a copy of which is on file in the office of the City Clerk as Document No. OO- 18869-1, and submitted to this meeting, is hereby approved. The City Manager, the Deputy City Manager, their specified designees ("Authorized Officers"), or any one of them, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Second Amendment to Lease in substantially the form submitted to this meeting, with such additions and changes therein as the Authorized Officer executing such document shall require or approve as being in the best interests of the City, and as approved as to form by the City Attorney or his specified designee, and with such other changes as are required by Orrick, Herrington & Sutcliffe LLP, as bond counsel, such approval to be conclusively evidenced by the execution and delivery thereof with such additions or changes.

Section 3. That the form of Quitclaim Deed (the "New Facility Quitclaim Deed"), a copy of which is on file in the office of the City Clerk as Document No. OO- 18869-2 and submitted to

this meeting, is hereby approved. The Authorized Officers, and each of them, are hereby authorized and directed, for and in the name and on behalf of the City, for the benefit of the Corporation, to execute and deliver the New Facility Quitclaim Deed in substantially the form submitted to this meeting, with such additions and changes therein as the Authorized Officer executing such document shall require or approve as being in the best interests of the City, and as approved as to form by the City Attorney or his specified designee, and with such other changes as are required by Orrick, Herrington & Sutcliffe LLP, as bond counsel, such approval to be conclusively evidenced by the execution and delivery thereof with such additions or changes.

Section 4. That the form of Quitclaim Deed (the "Old Facility Quitclaim Deed"), to be executed by the Corporation for the benefit of the City, a copy of which is on file in the office of the City Clerk as Document No. OO-18869-3, and submitted to this meeting, is hereby approved. The Authorized Officers, and each of them, are hereby authorized and directed, for and in the name and on behalf of the City, for the benefit of the City, to execute and deliver on behalf of the City a certificate (the "Acceptance and Consent Certificate") accepting the property conveyed under the Old Facility Quitclaim Deed and consenting to recordation thereof, to consent to such additions and changes in the Old Facility Quitclaim deed as the Authorized Officer executing such document shall require or approve as being in the best interests of the City, and as approved as to form by the City Attorney or his specified designee, and with such other changes as are required by Orrick, Herrington & Sutcliffe LLP, as bond counsel, such approval to be conclusively evidenced by the execution and delivery of the Acceptance and Consent Certificate to the Old Facility Quitclaim Deed with such additions or changes.

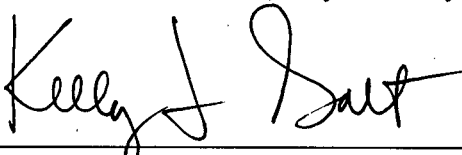
Section 5. That all actions heretofore taken by any officers, employees or agents of the City in connection with or related to any of the documents referenced herein, are hereby

approved, confirmed and ratified; and such other officials of the City as may be authorized by the City Manager are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents (including but not limited to the Second Amendment to Lease, the Old Facility Quitclaim Deed, the New Facility Quitclaim Deed and the Acceptance and Consent Certificate), which they, or any of them, may deem necessary or advisable in order to consummate the transactions contemplated by this ordinance.

Section 6. 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 7. 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
9/19/00
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