

RESOLUTION NUMBER R-295761

ADOPTED ON NOVEMBER 20, 2001

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED CONTRACT OF PURCHASE RELATING TO THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO LEASE REVENUE BONDS, SERIES 2001 (BALLPARK PROJECT) AND APPROVING OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, on November 3, 1998, the electorate of the City of San Diego [City] approved Ordinance No. O-18613 [1998 Ordinance] which authorized and directed the City to enter into the Memorandum of Understanding Concerning a Ballpark District, Construction of a Baseball Park, and a Redevelopment Project [MOU], within the Centre City East [East Village] Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project between the City, Redevelopment Agency of the City [Redevelopment Agency], Centre City Development Corporation, and Padres L.P. [collectively, "Parties"]; and

WHEREAS, the 1998 Ordinance provided that it was the intent of the electorate that the 1998 Ordinance and the MOU constitute the legislative acts establishing policy for the City on those matter, and provided for the ways and means for the implementation of that policy by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent of the 1998 Ordinance; and

WHEREAS, the MOU has been executed by all Parties; and

WHEREAS, Section XXXIII.A.1 of the MOU provides that a condition subsequent to the Parties' performance of rights and obligations under the MOU is the ability of the City to obtain its financing of choice for the Ballpark Project on terms reasonably acceptable to the City; and

WHEREAS, on November 20, 2001, a public hearing was held before the Council of the City of San Diego [City Council], at which a full presentation was made, including the receipt of written materials and testimony, concerning the terms and conditions upon which the City could obtain its financing of choice; and

WHEREAS, at the public hearing the City Council considered whether the terms and conditions of the proposed financing are reasonably acceptable at this time; and

WHEREAS, it is now fitting to consider such actions as may be necessary and appropriate to implement the purpose and intent of the 1998 Ordinance, the MOU, the Ballpark and Redevelopment Project Implementation Agreement, and the Second Ballpark and Redevelopment Project Implementation Agreement, consistent with both the City's and Agency's obligations under California law, and the discretion lawfully vested in the City Council acting on behalf of the City, and the Board of Directors of the Agency, acting on behalf of the Agency; and

WHEREAS, the City Council previously adopted Ordinance No. O-18747 (New Series) approving and authorizing the issuance and sale by the Public Facilities Financing Authority of the City of San Diego [Authority] of its Lease Revenue Bonds, Series 2001 [2001 Bonds] and approving certain other documents and actions in connection therewith, the proceeds of such 2001 Bonds to be used to finance the construction of a state-of-the-art baseball park [Ballpark], a public park to be located adjacent to the Ballpark, and the grounds and improvements immediately surrounding the Ballpark [collectively, the "Ballpark Facility"] certain land for the

Ballpark Facility, and other related land acquisitions, improvements, and infrastructure [collectively, the “Ballpark Project”]; and

WHEREAS, on January 31, 2000, the City Council adopted Resolution No. R-292697 entitled “A Resolution of the Council of The City of San Diego Approving the Form and Authorizing the Execution and Delivery of a Purchase Contract Relating To the Public Facilities Financing Authority of The City of San Diego Lease Revenue Bonds, Series 2000A and Approving Other Actions In Connection Therewith and Determining That There Are Significant Public Benefits to The City of San Diego From the Issuance of Such Bonds, and Approving and Authorizing an Agreement for Interim Services Relating to the Ballpark Financing” in which the City Council authorized execution and delivery of a Purchase Contract [the Original Purchase Contract] relating to the 2001 Bonds; and

WHEREAS, on this date the City Council adopted Resolution No. R-295760 entitled “A Resolution of the Council of the City of San Diego Approving the Form and Authorizing the Execution and Delivery of the Offering Document (In Preliminary and Final Form) and Approving a Plan of Finance Relating to the Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2001 (Ballpark Project) and Approving Other Actions in Connection Therewith” [the Offering Document Resolution]; and

WHEREAS, the City desires the 2001 Bonds be sold pursuant to the Purchase Contract, as amended and restated to reflect the new plan of finance described in the Offering Document

Resolution, with Merrill Lynch, Pierce, Fenner and Smith, Incorporated as purchaser of the 2001 Bonds; and

WHEREAS, the City is authorized to undertake the actions described in this Resolution pursuant to its Charter and the Constitution and other applicable laws of the State of California; and

WHEREAS, there has been presented to the City Council today a form of amended and restated Purchase Contract relating to the 2001 Bonds; and

WHEREAS, in connection with the issuance and sale of the 2001 Bonds, certain documents described below require the approval and authorization of the City Council; NOW, THEREFORE,

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

1. That all of the foregoing recitals are true and correct, and the City Council so finds and determines.
2. That the form and content of the amended and restated Contract of Purchase [Purchase Contract] dated the date of sale of the 2001 Bonds, among the Authority, the City, and Merrill Lynch, Pierce, Fenner and Smith Incorporated as purchaser [Purchaser], a copy of which is on file in the office of the City Clerk as Document No. RR-295761, is hereby approved. The City Manager of the City or his 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 Purchase Contract in substantially the form presented to and considered at this meeting, with such additions and changes therein as the City Manager of the City and his specified designees, and each of them, shall require or approve as being in the best interests of the City, and as is approved as to form by the City Attorney or his specified designee, such approval to be conclusively evidenced by the execution and delivery thereof. In connection with the execution and delivery of the Purchase

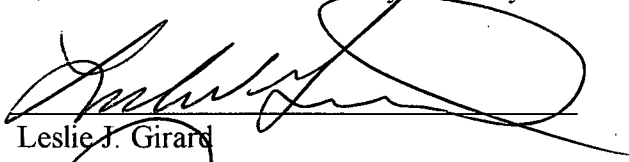
Contract, the City Manager of the City and his specified designees, and each of them, are further authorized to negotiate the principal amount of the 2001 Bonds to be sold pursuant to the Purchase Contract up to a maximum aggregate principal amount of not to exceed Two Hundred Ninety-Nine Million Dollars (\$299,000,000), the redemption and tender features of the 2001 Bonds and the indemnification provisions of the Purchase Contract, provided, (1) the true interest cost of the issue (a) shall not exceed the maximum interest rate permitted by law, and (b) shall, in the judgment of the financial advisor to the City and the Authority, be an acceptable interest rate giving the rating, security, and other terms of the issue; and (2) the maximum aggregate underwriter's discount from the principal amount of the 2001 Bonds shall not exceed 1.25% of the aggregate principal amount of the 2001 Bonds (without regard to original issue discount, if any), the maximum amount payable as underwriter's expenses, including the fees and expenses of underwriter's counsel, shall not exceed \$300,000, and the final maturity of the 2001 Bonds shall not be later than forty years from the date of issuance thereof.

3. That all actions heretofore taken by any officers, employees, or agents of the City with respect to the issuance, delivery, or sale of the 2001 Bonds, or in connection with or related to any of the documents referenced herein or the financing of the Project, are hereby approved, confirmed, and ratified; and such other officials, employees, and agents 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 which they, or any of them, may deem

necessary or advisable in order to consummate the lawful issuance and delivery of the 2001 Bonds and the disbursement of proceeds thereof in accordance with this Resolution.

APPROVED: CASEY GWINN, City Attorney

By



Leslie J. Girard
Assistant City Attorney

KJS:LJG:pev:jb:mb
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01/15/02 Corr. Copy
Or. Dept: Fin. Svcs
Aud. Cert: N/A
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