

ORDINANCE NUMBER O- 19161 (NEW SERIES)

ADOPTED ON MAR 17 2003

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO SECTION 99 OF THE CITY CHARTER AUTHORIZING A FACILITIES LEASE AND SITE LEASE WITH THE SAN DIEGO FACILITIES AND EQUIPMENT LEASING CORPORATION, AND A TRUST AGREEMENT, AND APPROVING THE FORM OF AN ASSIGNMENT AGREEMENT RELATING TO THE DELIVERY OF CERTIFICATES OF PARTICIPATION IN AN AMOUNT NOT TO EXCEED \$22,000,000 FOR A TERM NOT EXCEEDING 32 YEARS (1993 BALBOA PARK/MISSION BAY PARK REFUNDING), AND SUCH OTHER NECESSARY ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the San Diego Facilities and Equipment Leasing Corporation [Corporation] is a nonprofit public benefit corporation organized and existing under the laws of the State of California with the authority to assist the City of San Diego [City] in the financing of public facilities and improvements; and

WHEREAS, the City has proposed that the Corporation assist the City in the financing and refinancing of the acquisition, construction and installation of a portion of certain public improvements proposed in Balboa Park and Mission Bay Park [Balboa Park and Mission Bay Park Capital Improvements Program], which portion financed by the hereinafter described 1993 Certificates constitutes the "1993 Project;" and

WHEREAS, the City and the Corporation have heretofore entered into a Facilities Lease, dated as of November 1, 1993 [1993 Lease Agreement] pursuant to which the Corporation agreed to lease to the City certain land and improvements located thereon consisting generally of

the North Torrey Pines Golf Course and the Balboa Park House of Charm, more particularly described in the Site Lease and Facilities Lease described herein [Facilities]; and

WHEREAS, the Corporation and the City have previously entered into certain agreements with respect to the execution and delivery of the \$27,985,000 City of San Diego, California, Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvement Program) Series 1993 [1993 Certificates], which 1993 Certificates evidenced undivided proportionate interests in lease payments made pursuant to the terms the 1993 Lease Agreement; and

WHEREAS, the City desires to prepay the 1993 Lease Agreement and to defease and refinance the 1993 Certificates to achieve reductions in scheduled lease payments; and

WHEREAS, the City wishes to enter into certain leases and other agreements and authorize the sale of 2003 Certificates of Participation (1993 Balboa Park/Mission Bay Park Refunding) [2003 Certificates] under the Trust Agreement described below in order to refinance the 1993 Project; and

WHEREAS, it has been proposed that the City lease the same land and improvements [Facilities] to the Corporation which were the subject of the 1993 Lease Agreement, pursuant to an amended and restated Site and Facilities Lease, dated as of May 1, 2003 (or such other date as the City Manager may select for convenience of reference), by and between the City and the Corporation [Site Lease], the form of which has been presented to this City Council, which will grant the Corporation the right to use the Facilities for a term not to exceed 32 years, for which the Corporation will make a lump sum advance rental payment which will be used by the City for the refinancing of the 1993 Project; and

WHEREAS, it has been proposed that the City lease back the Facilities from the Corporation pursuant to an amended and restated Facilities Lease, dated as of May 1, 2003 (or

such other date as the City Manager may select for convenience of reference), by and between the City and the Corporation [Facilities Lease], the form of which has been presented to this City Council, pursuant to which the City will agree to lease the Facilities, for a term not to exceed 32 years, from the Corporation and to make certain lease payments [Lease Payments] in connection therewith; and

WHEREAS, as a financing mechanism, Certificates of Participation [2003 Certificates] will be executed and delivered evidencing the proportionate interests of the owners thereof in lease payments [Lease Payments] to be made by the City to the Corporation under the Facilities Lease; and

WHEREAS, it has been proposed that the Corporation grant, assign, and transfer all of its right to receive the Lease Payments under the Facilities Lease from the City to Wells Fargo Bank, N.A., as Trustee [Trustee] pursuant to an Assignment Agreement, dated as of May 1, 2003 (or such other date as the City Manager may select for convenience of reference), by and between the Corporation and the Trustee [Assignment Agreement], the form of which has been presented to this City Council, for the purpose of paying the Interest Components and Principal Components on the Certificates; and

WHEREAS, the Corporation and the City have determined that it would be in the best interest of the Corporation, the City, and citizens of the community to authorize, pursuant to the Trust Agreement, dated as of May 1, 2003 (or such other date as the City Manager may select for convenience of reference), by and among the Corporation, the Trustee and the City [Trust Agreement], the form of which has been presented to this City Council, the preparation, execution, sale, and delivery of Certificates of Participation in an amount not to exceed

\$22,000,000 [Certificates] which represent direct and proportionate interests in the principal components and interest components of the Lease Payments; and

WHEREAS, pursuant to Section 99 of the Charter of the City of San Diego, a noticed hearing was held on the date hereof, regarding the leasing of the Facilities and the agreements to be entered into to carry out the purposes of said Project as referred to in the recitals hereof;

NOW, THEREFORE,

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

Section 1. The proposed form of Trust Agreement, dated as of May 1, 2003, by and among the Trustee, the Corporation and the City, which is on file in the office of the City Clerk as Document No. OO- 19161 -1 is hereby approved. The City Manager, the Deputy City Manager, the City Clerk, and their authorized designees, are authorized and directed to execute said Trust Agreement on behalf of the City.

Section 2. The proposed form of Facilities Lease, dated as of May 1, 2003, by and between the Corporation and the City, which is on file in the office of the City Clerk as Document No. OO- 19161 -2, is hereby approved. The City Manager, the Deputy City Manager, the City Clerk, and their authorized designees, are authorized and directed to execute said Facilities Lease on behalf of the City.

Section 3. The proposed form of Site Lease, dated as of May 1, 2003, by and between the Corporation and the City, which is on file in the office of the City Clerk as Document No. OO- 19161 -3, is hereby approved. The City Manager, the Deputy City Manager, the City Clerk, and their authorized designees, are authorized and directed to execute said Site Lease on behalf of the City.

Section 4. The proposed form of Assignment Agreement, dated as of May 1, 2003, by and between the Corporation and the Trustee, which is on file in the office of the City Clerk as Document No. OO-19161 -4, is hereby approved.

Section 5. The Trustee, as compensation for acting as Trustee pursuant to the Trust Agreement, is hereby authorized to pay to itself out of the proceeds of the delivery of said Certificates of Participation.

Section 6. The Trust Agreement, Facilities Lease, Site Lease, and Assignment Agreement shall be executed in the forms hereby approved, with such additions thereto and changes therein as are consistent with the essential terms thereof and which are approved by the City Manager, the Deputy City Manager, and their authorized designees. The City Manager's, the Deputy City Manager's, or their authorized designees', approval of such changes shall be conclusively established by his/her execution of such documents. Scheduled lease payments under the Facilities Lease shall be less than scheduled lease payments under the 1993 Lease.

Section 7. The City Manager, the Deputy City Manager, City Clerk, their authorized designees, and other officials of the City are hereby authorized and directed to do any and all things and to execute and delivery such agreements, documents and certificates as may be necessary and advisable to effect the purpose of this ordinance.

Section 8. The Clerk is authorized and directed to cause a digest or copy of this ordinance to be published at least once in The San Diego Daily Transcript within fifteen days after the adoption of this ordinance pursuant to Section 18 of the City Charter.

Section 9. 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 10. 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*  
for Kelly J. Salt  
Deputy City Attorney

KJS:pev  
2/18/03  
2/27/03 Cor. Copy  
Or. Dept. Fin. Svcs  
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