

ORDINANCE NUMBER O- 19204 (NEW SERIES)

ADOPTED ON AUG 04 2003

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO SECTION 99 OF THE CHARTER OF THE CITY OF SAN DIEGO APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE LEASE AND AN AMENDED AND RESTATED BALLPARK FACILITY LEASE, AND APPROVING AND AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AN ASSIGNMENT AGREEMENT AND AN INDENTURE BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO AND APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF THE AUTHORITY'S REFUNDING LEASE REVENUE BONDS, SERIES 2003 (BALLPARK PROJECT) AND APPROVING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, on November 3, 1998, the electorate of the City of San Diego [City] approved Ordinance No. 0-18613 [1998 Ordinance], which authorized the City and the Redevelopment Agency of The City of San Diego [Agency] to enter into a 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; 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 matters, 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 thereto; and

WHEREAS, in furtherance of the 1998 Ordinance, the Public Facilities Financing Authority [Authority] has heretofore caused the delivery of One Hundred Sixty-Nine Million Six Hundred Eighty-Five Thousand Dollars (\$169,685,000) of Lease Revenue Bonds, Series 2002 (Ballpark Project) [Original Bonds] pursuant to that certain Indenture, dated as of February 1, 2002 [Original Indenture], by and between the Authority and Wells Fargo Bank, National Association, as Trustee [Original Trustee] which are secured by rental payments being made by the City pursuant to that certain Ballpark Facility Lease, dated as of February 1, 2002 [Original Facility Lease] by and between the Authority as lessor and the City as lessee whereby the Authority has agreed to sublease to the City the Ballpark Facility, as defined in the Original Facility Lease, including the land described in Exhibit A attached thereto or as it may be amended by virtue of action taken by the City Council prior to the issuance of the Refunding Bonds (as defined below) [Site]; and

WHEREAS, the purpose of the issuance of the Original Bonds was to finance a portion of the construction of a state-of-the-art baseball park [Ballpark], as authorized by the 1998 Ordinance and a public park to be located adjacent to the Ballpark [Park and together with the Ballpark, the Ballpark Facility] and certain related infrastructure [collectively, the Project]; and

WHEREAS, the City and the Authority have determined that it is in the public interest, convenience and welfare and for the common benefits of the inhabitants of the City, by substantially reducing the cost of financing the City's portion of the Project, that the City finance the refunding and defeasance of the Original Bonds, thereby resulting in substantial savings to the

City in financing costs for its portion of the Project, by issuance by the Authority of not to exceed One Hundred Ninety-Five Million Dollars (\$195,000,000) of Refunding Lease Revenue Bonds, Series 2003 (Ballpark Project) [Refunding Bonds], pursuant to an Indenture tentatively dated as of October 1, 2003 [Indenture], by and between the Authority and Wells Fargo Bank, National Association, as Trustee [Trustee], the execution and delivery of a Site Lease [Site Lease], by and between the Authority and the City, whereby the City will lease the Site to the Authority for sublease back to the City, and the execution and delivery of an Amended and Restated Ballpark Facility Lease [Facility Lease] by and between the Authority and the City, whereby the City will sublease from the Authority the Ballpark Facility and the Site; and

WHEREAS, the City is authorized by law to lease the Ballpark Facility and the Project is necessary and proper for public purposes; and

WHEREAS, the City intends to approve, by this ordinance, the issuance of not to exceed One Hundred Ninety-Five Million Dollars (\$195,000,000) aggregate principal amount of the Refunding Bonds by the Authority for the purpose of financing the Project; and

WHEREAS, the City and the Authority are entering into the Site Lease, tentatively dated as of October 1, 2003, by and between the City and the Authority, whereby the City will lease the Site (as defined in the Site Lease) to the Authority; and

WHEREAS, the Authority and the City are entering into the Facility Lease, tentatively dated as of October 1, 2003, by and between the Authority and the City, whereby the Authority has agreed to sublease to the City the Ballpark Facility and the Site; and

WHEREAS, the City desires that the Refunding Bonds be issued, and certain actions be undertaken and documents be approved in connection therewith; and

WHEREAS, the City is authorized to undertake the actions described in this Ordinance 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 of San Diego, as follows:

Section 1. All of the foregoing recitals are true and correct, and the Council so finds and determines.

Section 2. The City hereby requests the Authority to approve and authorize the issuance and sale of the Refunding Bonds in an amount not to exceed One Hundred Ninety-Five Million Dollars (\$195,000,000), to provide funds to defease and refund all outstanding Original Bonds, to fund any debt service reserve fund requirement and/or costs of a debt service reserve surety bond, to fund the costs of bond insurance or any other form of credit or liquidity enhancement which results in a lower true cost of borrowing, and to pay the costs of issuance, all as determined by the City and the Authority in consultation with the City's financial advisors with respect to the Refunding Bonds.

Section 3. The anticipated source of revenue for payment of the Refunding Bonds hereby authorized are the Base Rental Payments under and as defined in the Facility Lease.

Section 4. To provide for the issuance and sale of the Refunding Bonds, the City hereby authorizes and approves the Authority's execution, delivery and performance of the Indenture, in substantially the form presented to and considered at this meeting as Exhibit "A," a copy of which is on file in the office of the City Clerk as Document No. OO-19204-1. The Refunding Bonds shall bear a fixed rate of interest not to exceed the maximum interest rate allowed by law, and may be supported by bond insurance or any other form of credit or liquidity enhancement.

Section 5. The City hereby authorizes and approves of the Authority's execution, delivery and performance of an Assignment Agreement, tentatively dated as of October 1, 2003 [Assignment Agreement], by and between the Authority and the Trustee in substantially the form presented to and considered at this meeting as Exhibit "B," a copy of which is on file in the office of the City Clerk as Document No. OO- 19204-2.

Section 6. The City hereby authorizes and approves the form and content of the Site Lease, pursuant to which the Site will be leased to the Authority for lease back to the City. A copy of the Site Lease is on file in the office of the City Clerk as Document No. OO- 19204-3 a form of which Site Lease is presented to and considered at this meeting as Exhibit "C." The City Manager of the City and his specified designees [Authorized Signatory], are hereby severally authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the Site Lease in substantially the form presented to and considered at this meeting, and the City Clerk of the City and his specified designees, and each of them, are authorized to attest thereto, with such additions and changes therein as any Authorized Signatory shall 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 such Authorized Signatory's execution and delivery of said Site Lease.

Section 7. The City hereby authorizes and approves the form and content of the Facility Lease pursuant to which the Ballpark Facility and the Site will be leased back to the City. A copy of the Facility Lease is on file in the office of the City Clerk as Document No. OO- 19204-4 a form of which Facility Lease is presented to and considered at this meeting as Exhibit "D." Each Authorized Signatory is hereby severally 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 and his specified designees, and any one of them, are authorized to attest thereto, with such additions and changes therein as any Authorized Signatory shall 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 such Authorized Signatory's execution and delivery of said Facility Lease.

Section 8. Each Authorized Signatory is hereby severally authorized and directed to take all actions and execute any and all documents necessary or advisable to arrange for the insuring of all or a portion of the Refunding Bonds or to obtain a debt service reserve fund surety bond, or to obtain any other form of credit or liquidity enhancement, if, upon the consultation and advice of the City's financial advisors with respect to the Refunding Bonds, such insurance, surety bond or other credit enhancement will result in a lower true interest cost.

Section 9. All actions heretofore taken by any Authorized Signatory or any other officials, employees or agents of the City with respect to the issuance, delivery or sale of the Refunding Bonds, 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, 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, including, without limitation custody agreements and escrow agreements, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Refunding Bonds and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 10. The City Clerk is hereby directed to cause publication of notice of the adoption of this Ordinance for five consecutive days in the San Diego Daily Transcript and the Public Record Reporter, newspapers of general circulation published and circulated in the City/County of San Diego, as required by California Government Code section 6040.1 within fifteen days from the passage hereof pursuant to California Government Code section 6547.2.

Section 11. This Ordinance is subject to the provisions of the San Diego Municipal Code and San Diego City Charter. Subject to those provisions, this Ordinance shall take effect and be in force thirty (30) days from and after the date of its adoption and, prior to the expiration of fifteen days from the passage hereof, the City Clerk shall cause this Ordinance to be published at least once in the San Diego Daily Transcript and the Public Record Reporter, newspapers of general circulation, published and circulated in the City.

Section 12. Each Authorized Signatory is hereby severally authorized to make necessary arrangements with an appropriate title insurance company to issue a title insurance binder with respect to land that is the subject of the Site Lease and the Facility Lease and to execute any agreement required for retention of such title insurance company or companies.

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

Section 14. 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 15. 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
07/08/03
07/10/03 Cor. Copy
Or. Dept: Fin. Svcs.
O-2004-9
Form=o&t.frm