

RESOLUTION NUMBER R- 297692

ADOPTED ON MAR 03 2003

A RESOLUTION AUTHORIZING THE SALE OF NOT TO EXCEED \$22,000,000 CERTIFICATES OF PARTICIPATION BY THE CITY OF SAN DIEGO, CALIFORNIA; APPROVING A TRUST AGREEMENT, FACILITIES LEASE, SITE LEASE, ASSIGNMENT AGREEMENT, ESCROW AGREEMENT, FORM OF THE OFFICIAL BID FORM, THE NOTICE INVITING BIDS, AND THE PRELIMINARY OFFICIAL STATEMENT; AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO.

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 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 hereby defease and refinance the 1993 Certificates to achieve discounted present value 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 a Site 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 prepayment of the 1993 Lease and 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 the 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, in connection therewith, the City Council of the City has introduced Ordinance No. ~~0-~~¹⁹¹⁶¹ (N.S.), entitled "AN ORDINANCE PURSUANT TO SECTION 99 OF THE CITY CHARTER AUTHORIZING A FACILITIES LEASE AND SITE LEASE WITH 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" [Ordinance]; and

WHEREAS, pursuant to the City's authorization there has been prepared and presented to this City Council a Preliminary Official Statement containing information material to the offering and sale of the Certificates; and

WHEREAS, the Preliminary Official Statement has been filed with this City, and the members of the City Council, with the aid of its staff and the Financial Advisors to the City, have reviewed said Preliminary Official Statement; and

WHEREAS, the City Council wishes to approve certain aspects of the Bonds to be issued by the Authority for the Project, including the form of Official Statement to be utilized in connection with the offering of the Bonds [Official Statement], the form of Escrow Agreement, the form of the Official Bid Form and the Notice Inviting Bids to be distributed to potential Purchasers of the Bonds and the form of Continuing Disclosure Agreement providing for certain continuing disclosure by the City of pertinent financial information related to the refunding bonds; and

WHEREAS, the City deems it necessary and proper that proposals be invited for the purchase of the Certificates and that the Certificates be sold in the manner described below; and

WHEREAS, as a result of the sale and delivery of the 2003 Certificates, and the substitution of a surety policy for monies on deposit in the Reserve Fund for the 1993 Certificates, the City anticipates it will save approximately \$2.3 million in projected budgetary savings [Savings] in fiscal years 2003-2004 and 2004-2005; NOW, THEREFORE,

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

1. That this Council hereby authorizes the preparation, execution, sale and delivery of Certificates of Participation in an aggregate principal amount not to exceed \$22,000,000 in accordance with the terms and provisions of the Trust Agreement, subject to the execution and delivery of the Trust Agreement, the Facilities Lease, the Site Lease, and the Assignment Agreement in substantially the form approved by Ordinance No. 0-_____ (N.S.), copies of which are on file as Document Nos. 00-_____1, 00-_____2, 00-_____3, and 00-_____4, respectively. The proceeds of the Certificates of Participation shall be deposited with the Trustee and applied as provided in the Trust Agreement.

19161

Use Ord # given to: (0-2003-121)

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2. Wells Fargo Bank, N.A. is hereby appointed as Trustee on behalf of the owners of the Certificates of Participation with the duties and powers of such trustee as set forth in the Trust Agreement.

3. The City Manager, the Deputy City Manager, and their authorized designees, the City Clerk and such other officers of the City are authorized and directed, jointly and severally, to do any and all things to execute and deliver any and all documents which they may deem necessary and advisable in order to consummate the sale and delivery of the Certificates of Participation and

otherwise effectuate the purposes of this Resolution, and such actions previously taken by such officers are hereby ratified and confirmed.

4. The City Clerk is hereby authorized and directed to cause the Notice Inviting the Bids approved in Section 6, below, to be published once, to the extent required by law, at least fifteen days prior to the earliest date for receiving proposals provided for therein, in The San Diego Daily Transcript, the official newspaper of the City, with such changes, insertions and omissions as the City Clerk may approve, such approval to be conclusively evidenced by such publication of the Notice Inviting Bids. The City Clerk shall also cause to be published in The Bond Buyer once, at least ten days prior to the earliest date for receiving proposals provided for therein, a short form Notice of Sale of the Certificates, in a form acceptable to the City Manager based on the recommendation of the Financial Advisors.

5. Sealed proposals for the purchase of the Certificates shall be received by the Treasurer of the City at the time and place provided for in the Notice Inviting Bids as hereinafter approved or such other as the City Manager may select based on the advice of the City's Financial Advisors. The President of the Corporation, or his authorized designee, is hereby authorized and directed for and on behalf of the Corporation to award sale of the Certificates within 26 hours of the receipt of bids to the responsible bidder offering the lowest true interest cost to the City, all as determined by the Treasurer, in consultation with the City's Financial Advisors, with the right being reserved to reject any and all bids; provided that the aggregate principal amount of the Certificates shall not exceed Twenty-Two Million Dollars (\$22,000,000), the stated interest rate for any maturity of Certificates may not exceed the maximum rate allowed by law, and scheduled debt services with respect to the Certificates shall be less, on a discounted, present value basis, than scheduled debt service with respect to the 1993 Certificates. The City Treasurer is hereby

authorized and directed to deliver the Certificates to the successful bidder upon payment therefor at the purchase price specified in the attached bid, including accrued interest to the date of delivery, and to undertake any and all acts necessary or desirable to accomplish the purpose of this resolution.

6. The form, terms and provisions of the Notice Inviting Bids, in substantially the form submitted to this meeting, a copy of which is on file as Document No. RR-~~297692~~²⁹⁷⁶⁹²-1 are hereby approved and adopted as part of this Resolution. The City Manager, the Deputy City Manager, and their authorized designees, are hereby authorized and directed to cause such Notice Inviting Bids to be printed with such changes, insertions and omissions as the City Manager, the Deputy City Manager, and their authorized designees, may approve, such approval to be conclusively evidenced by the final printing of the Notice Inviting Bids and Official Bid Form.

7. The form of the Escrow Agreement [Escrow Agreement] among the City, the Corporation and BNY Western Trust Company, [Escrow Bank] in substantially the form submitted to this meeting, a copy of which is on file as Document No. RR-~~_____~~²⁹⁷⁶⁹²-2, is hereby approved. The City Manager, the Deputy City Manager, and their authorized designees, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Corporation and the Escrow Bank the Escrow Agreement in substantially said form, with such changes therein as the City Manager, the Deputy City Manager, and their authorized designees, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof by the City Manager, the Deputy City Manager, or their authorized designees.

8. The form of the Continuing Disclosure Agreement between the City, on behalf of the Corporation, and the Trustee [Continuing Disclosure Agreement], in substantially the form

297692

submitted to this meeting, a copy of which is on file as Document No. RR-____-3, is hereby approved. The City Manager, the Deputy City Manager, and their authorized designees, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Trustee the Continuing Disclosure Agreement in substantially said form, with such changes therein as the City Manager, the Deputy City Manager, or their authorized designees, executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

9. The City Manager, Deputy City Manager, City Clerk, and their authorized designees, and other officials of the City are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purpose of this resolution and the financing herein authorized. Without limiting the foregoing, the City Manager, the Deputy City Manager and their authorized designees are hereby authorized (i) to solicit and accept bids for municipal bond insurance for the 2003 Certificates and/or a surety for reserve related to all or part of any reserve requirements related to the 2003 Certificates; (ii) to finalize the form of such policy and/or surety; and (iii) if it is determined that the policy and the surety will result in interest rate or loan payment savings for the City, to pay the insurance premium of such policy and/or surety from the proceeds of the issuance and sale of the Certificates and to enter into a reimbursement agreement relative to such surety with the provider thereof.

10. The Preliminary Official Statement, a copy of which is on file as Document No. RR-297692-4, is approved for distribution in the offering and sale of Certificates of Participation evidencing proportionate interests of the holders thereof in Lease Payments to be made by the City under the Facilities Lease and any distribution of the Preliminary Official Statement by the Financial Advisors prior to the date hereof is ratified and approved. The City

Manager is hereby authorized to execute a certificate evidencing his determination, on behalf of the City, that he deems final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the Preliminary Official Statement describing the Certificates.

11. The City Manager, the Deputy City Manager, and their authorized designees, are authorized to approve corrections and additions to the Preliminary Official Statement by supplement or amendment thereto, or otherwise as appropriate, provided that any such corrections or additions shall be necessary to cause the information contained therein to conform with facts material to the Certificates, or to the proceedings of the City, or such corrections or additions are in form rather than in substance.

12. The City Manager, the Deputy City Manager, and their authorized designees, are authorized and directed to cause the Preliminary Official Statement to be brought into the form of a Final Official Statement and to execute said Final Official Statement, dated as of the date of the sale of the Certificates. The City Manager, the Deputy City Manager, and their authorized designees, are further authorized and directed to execute a statement that the facts contained in the Final Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the Certificates, true and correct in all material respects and that the Final Official Statement did not, on the date of sale of the Certificates, and does not, as of the date of delivery of the Certificates, contain any untrue statement of a material fact with respect to the City required to be stated where necessary to make a statement not misleading in light of the circumstances under which it was made. The City Manager, the Deputy City Manager, and their authorized designees, shall take such further actions prior to the signing of the statement as are deemed necessary or appropriate to verify the accuracy of the statement.

13. The City Manager shall deposit the projected Savings in a reserve fund [Reserve Fund] to be used for capital projects in Mission Bay and Balboa Park; provided, however, during the annual review of the City's budget, the Council will determine how the Savings will be allocated in the annual appropriations ordinance and may allocate such funds for other purposes than capital projects in Mission Bay and Balboa Park.

14. This Resolution shall become effective on the effective date of Ordinance

No. 0- 19161

APPROVED: CASEY GWINN, City Attorney

By



Kelly J. Salt
Deputy City Attorney

KJS:pev

2/18/03

2/27/03 Cor. Copy

3/10/03 Rev. 1

Or. Dept. Fin. Svcs.

Aud. Cert: N/A

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