

ORDINANCE NUMBER O- 19490 (NEW SERIES)DATE OF FINAL PASSAGE MAY 10 2006

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE SALE AGREEMENT; APPROVING AND ACKNOWLEDGING THE FORM OF THE DECLARATION AND AGREEMENT OF TRUST, THE INDENTURE, THE PURCHASE CONTRACT, THE CONTINUING DISCLOSURE UNDERTAKING AND THE PRELIMINARY OFFERING CIRCULAR; APPROVING A FINAL OFFERING CIRCULAR; AND AUTHORIZING, ACKNOWLEDGING AND APPROVING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, The City of San Diego, California [City], is entitled to receive certain amounts of payments [Tobacco Settlement Revenues] coming to the State of California [State] pursuant to the Master Settlement Agreement among a number of jurisdictions and certain tobacco manufacturing companies [Master Settlement Agreement], all pursuant to a Memorandum of Understanding, dated August 5, 1998, and an Agreement Regarding Interpretation of Memorandum of Understanding dated January 18, 2000 [as amended, ARIMOU]; and

WHEREAS, the City has determined to sell its future right, title and interest in the Tobacco Settlement Revenues and all Lump Sum Payments, if any [Lump Sum Payments], received from participating manufacturers under the Master Settlement Agreement [collectively, Sold City Tobacco Assets], subject to the provisions of the Sale Agreement and the Indenture hereinafter described, to obtain money to make a contribution to the San Diego City Employees' Retirement System [Retirement System] in an amount above the City's annual required

contribution to reduce the unfunded accrued actuarial liability of the Retirement System, all as provided by law; and

WHEREAS, while the Bonds remain outstanding, amounts of Tobacco Settlement Revenues in excess of \$10.1 million actually received in any calendar year [Unencumbered Revenues], and the Unencumbered Portion (the fraction equal to (x) the aggregate principal amount of Bonds (herein defined) authorized hereunder that are no longer outstanding on the date of receipt of such Lump Sum Payment divided by (y) the initial aggregate principal amount of Bonds authorized hereunder [Unencumbered Portion]) of each Lump Sum Payment (if any) will be transferred to the Residual Trust (as defined below) of which the City will be the sole beneficiary and made immediately available to be paid to the City on an annual basis and, upon payment in full of all Bonds authorized hereunder, all Tobacco Settlement Revenues and all Lump Sum Payments will be transferred to the Residual Trust and made available to be paid to the City; and

WHEREAS, the City is authorized to sell or otherwise dispose of the Sold City Tobacco Assets as the interests of the City may require pursuant to the provisions of section 1 of the City Charter of the City of San Diego [City Charter] and section 37350 of the Government Code of the State; and

WHEREAS, the City of San Diego Tobacco Settlement Revenue Funding Corporation [Corporation] desires to purchase for valuable consideration the Sold City Tobacco Assets from the City and the City desires to execute and deliver a Sale Agreement, to be dated as of June 1, 2006 [Sale Agreement], for the purposes set forth herein and therein; and

WHEREAS, the Corporation will fund its purchase of the Sold City Tobacco Assets from the proceeds of taxable bonds [Bonds] to be issued by the Corporation, pursuant to an Indenture,

as supplemented by a Series 2006 Supplement, each dated as of June 1, 2006 [Indenture], by and between the Corporation and an Indenture Trustee to be named therein [Indenture Trustee], which Bonds will be payable solely from the payments received by the Corporation in connection with the portion of the Sold City Tobacco Assets pledged therefore, together with certain funds to be held under the Indenture; and

WHEREAS, the Corporation will establish a City of San Diego Tobacco Settlement Residual Trust [Residual Trust] pursuant to a Declaration and Agreement of Trust, dated as of June 1, 2006 [Agreement of Trust], to pay or cause to be paid to the City the Unencumbered Revenues, the Unencumbered Portion of each Lump Sum Payment (if any) and all amounts to be deposited in the Residual Trust pursuant to the Indenture free and clear of the lien thereof; and

WHEREAS, the Corporation will pay or cause to be paid to the City, as sole beneficiary of the Residual Trust, (i) amounts of Tobacco Settlement Revenues in excess of \$10.1 million actually received in any calendar year, and the Unencumbered Portion of each Lump Sum Payment (if any) received by the Indenture Trustee, (ii) the revenues of the Corporation that are in excess of the Corporation's expenses, debt service and contractual obligations pursuant to the Indenture, and (iii) excess revenues derived from the Sold City Tobacco Assets deposited with the Indenture Trustee; and

WHEREAS, the City acknowledges that the Corporation will enter into a Purchase Contract [Purchase Contract], pursuant to which the Corporation will sell, and the underwriters named therein will purchase, the Bonds; and

WHEREAS, the City acknowledges that the Corporation will prepare and deliver a Preliminary Offering Circular relating to the Bonds [Preliminary Offering Circular], the form of

which was acknowledged and approved by the City's Disclosure Practice Working Group prior to its submission to this City Council; and

WHEREAS, the City acknowledges that the Corporation will prepare, execute and deliver a Final Offering Circular relating to the Bonds (in substantially the form of the Preliminary Offering Circular, with such changes therein and additions thereto to reflect the terms of the sale of the Bonds as an authorized officer of the Corporation shall approve [Final Offering Circular], which Final Offering Circular will be acknowledged and approved by the City's Disclosure Practice Working Group; and

WHEREAS, the City acknowledges that the Corporation will prepare and deliver a Continuing Disclosure Undertaking relating to the Bonds [Continuing Disclosure Undertaking]; and

WHEREAS, the City has determined that the execution and delivery of the Sale Agreement, the issuance of the Bonds and the transactions related thereto, as herein approved, will reduce the amount and duration of risk associated with the City's receipt of Tobacco Settlement Revenues pursuant to the Master Settlement Agreement and thereby ensure a source of funds from which to meet the needs of the City, including the funding of the City's Retirement System; NOW THEREFORE,

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

Section 1. The City Council hereby specifically finds and declares that the actions authorized hereby constitute and are public affairs of the City and that the statements, findings and determinations of the City set forth in the preambles above and of the documents approved herein are true and correct.

Section 2. The City hereby authorizes the sale of the Sold City Tobacco Assets to the Corporation for a sale price determined by any one of the Mayor, the Chief Financial Officer, the Chief Operating Officer or their respective designees [each an "Authorized Officer"] to be in the best interests of the City, provided that (i) the initial principal amount of the Bonds does not exceed \$115 million; (ii) the weighted average interest rate of the Bonds shall not be more than 7.90%; (iii) the underwriters' compensation for selling the Bonds shall not exceed 1.0% of the initial principal amount of the Bonds; (iv) the net proceeds of the Bonds paid to the City at closing (exclusive of reserves held pursuant to the Indenture, costs of issuing the Bonds, underwriters' compensation and original issue discount) as partial purchase price for the Tobacco Settlement Revenues, together with amounts to be deposited into the Retirement System in connection with Section 5 hereof, is not less than \$100 million; (v) the stated maturity of the Bonds shall not be later than June 1, 2032, provided that the pledge of the Sold City Tobacco Assets to the owners of the Bonds pursuant to and in accordance with the Indenture will continue until all amounts due on the Bonds have been paid in full; and (vi)(a) the Bond issue shall be structured substantially as provided in the form of Indenture presented at this meeting and on file with the City Clerk as Document No. OO- 19490-2, and (b) the sale of the Bonds to the underwriters will be made upon substantially the terms provided in the form of Purchase Contract. The Sale Agreement in substantially the form presented to this City Council and on file with the City Clerk as Document No. OO- 19490-6 is hereby approved. Any Authorized Officer is hereby authorized and directed to execute and deliver the Sale Agreement on behalf of the City, which shall be in substantially the form presented to this meeting, with such changes therein, deletions therefrom and additions thereto as any of the foregoing officers and the City Attorney of the City of San Diego [City Attorney], or designee, or Bond Counsel shall approve, including any

changes, deletions or additions required by the rating agencies in order to obtain the necessary ratings on the Bonds, which approval shall be conclusively evidenced by the execution and delivery of the Sale Agreement.

Section 3. The forms of the Agreement of Trust, the Indenture, the Purchase Contract, the Preliminary Offering Circular, and the Continuing Disclosure Undertaking in substantially the forms presented to this City Council and on file with the City Clerk as

Document Nos. OO- 19490-1, OO- 19490-2, OO- 19490-3, OO- 19490-4, and OO- 19490-5,

respectively, are hereby acknowledged and approved. The execution and delivery by the Corporation of a Final Offering Circular relating to the Bonds (in substantially the form of the Preliminary Offering Circular, with such changes therein and additions thereto to reflect the terms of the sale of the Bonds as an authorized officer of the Corporation shall approve) is hereby acknowledged.

Section 4. Any Authorized Officer, in consultation with the City Attorney or Bond Counsel, is hereby authorized and directed to send, or to cause to be sent, an irrevocable written instruction to the State Attorney General notifying the State of the sale of the Sold City Tobacco Assets and instructing the disbursement pursuant to Section 4 of the ARIMOU of all Sold City Tobacco Assets to the Indenture Trustee.

Section 5. Any Authorized Officer is hereby authorized and directed to deposit, or to cause to be deposited, all or a portion of the City's anticipated Tobacco Settlement Revenues for calendar year 2006 into the Retirement System.

Section 6. The City Clerk is hereby authorized and directed to attest to the signature of each Authorized Officer in connection with the execution and delivery of the Sale Agreement.

Section 7. Any Authorized Officer and such other City officers and employees, as appropriate, are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which any of them may deem necessary or advisable in order to implement the Sale Agreement and otherwise to carry out, give effect to and comply with the terms and intent of this Ordinance and the consummation of transactions contemplated hereby including, but not limited to, the execution of any certification which is consistent, upon the advice of the City Attorney or Bond Counsel, with the requirements of the Sale Agreement, the Indenture and the Purchase Contract. Any actions heretofore taken by such officers in furtherance of any of the transactions authorized herein are hereby ratified, confirmed and approved.

Section 8. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Ordinance, whether before or after the sale of the Sold City Tobacco Assets or the issuance of the Bonds, including without limitation any of the foregoing, that may be necessary or desirable in connection with any default under or amendment of such documents, may be given or taken by any one of the Authorized Officers or the City Attorney without further authorization by this City Council, and any of the foregoing officers is hereby authorized and directed to give any such consent, approval, notice, order or request and to take any such action which such officers may deem necessary or desirable to further the purpose of this Ordinance.

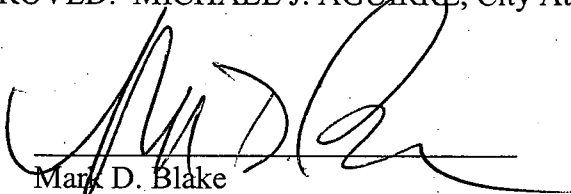
Section 9. This Ordinance is subject to the provisions of the San Diego Municipal Code and the City Charter. Subject to those provisions, this Ordinance shall take effect and be in force thirty (30) days from the date of its passage and, prior to the expiration of fifteen (15) days from the passage hereof, the City Clerk shall cause this Ordinance to be published at least once

in the San Diego Daily Transcript, a daily newspaper of general circulation, and circulated in the City.

Section 10. This Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Mark D. Blake  
Deputy City Attorney


MDB:ai  
04/20/06  
Or.Dept:Financial  
O-2006-120

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ACCEPTED

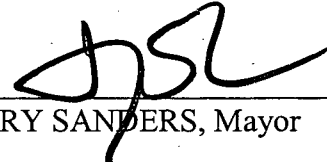


I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 08 2006

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 5-10-06  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

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JERRY SANDERS, Mayor