

1/30/07

ORDINANCE NUMBER O- 19573 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 31 2007

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED SITE LEASE, AN AMENDED AND RESTATED BALLPARK FACILITY LEASE, A CONTINUING DISCLOSURE CERTIFICATE, AND A PURCHASE AGREEMENT AND AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A SECOND REAFFIRMATION OF ASSIGNMENT AGREEMENT, ESCROW INSTRUCTIONS AND AN INDENTURE BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO AND APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$172,000,000 OF THE AUTHORITY'S LEASE REVENUE REFUNDING BONDS, SERIES 2007A (BALLPARK REFUNDING), AUTHORIZING THE CITY ATTORNEY TO APPOINT BOND COUNSEL AND DISCLOSURE COUNSEL, AND APPROVING 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 of the City of San Diego [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 [as amended, 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 and improvements described in Exhibit A attached thereto [Site]; and

WHEREAS, the purpose Original Bonds were issued to finance: (i) a portion of the construction of (A) a state-of-the-art baseball park [Ballpark], as authorized by the 1998 Ordinance, and (B) a public park to be located adjacent to the Ballpark [Park and together with the Site and the Ballpark, the Ballpark Facility]; (ii) certain related infrastructure [collectively, the Project]; (iii) capitalized interest; (iv) a debt service reserve and (v) the costs of issuance of the Original Bonds; and

WHEREAS, the City and the Authority determined that it is in the public interest, convenience and welfare and for the common benefits of the inhabitants of the City that the City

finance the refunding and redemption 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 Lease Revenue Refunding Bonds, Series 2007A (Ballpark Refunding) [Refunding Bonds], pursuant to an Indenture [Indenture], by and between the Authority and Wells Fargo Bank, National Association, as Trustee [Trustee], the execution and delivery of an Amended and Restated 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, 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, the execution and delivery of a Second Reaffirmation of Assignment Agreement [Assignment Agreement] by and between the Authority and the Trustee, pursuant to which the Authority assigns to the Trustee its rights under the Site Lease and the Facility Lease, and execution and delivery of Escrow Instructions [Escrow Instructions] from the Authority to the Trustee; and

WHEREAS, the City Council previously adopted Ordinance No. 0-19204 [2003 Ordinance], approving and authorizing the issuance and sale by the Authority of its Refunding Lease Revenue Bonds, Series 2003 [Proposed 2003 Refunding Bonds] for the purpose of financing the refunding and defeasance of the Original Bonds; and

WHEREAS, the City Council previously adopted Resolution No. R-298301 on August 4, 2003 [2003 Resolution], which, among other things, authorized the execution and delivery of a preliminary official statement and a final official statement relating to the Proposed 2003 Refunding Bonds; and

WHEREAS, the Proposed 2003 Refunding Bonds were not issued and the City now wishes to approve the issuance and sale by the Authority of not to exceed One Hundred Seventy-two Million Dollars (\$172,000,000) of the Authority's Lease Revenue Refunding Bonds, Series 2007A (Ballpark Refunding) [Refunding Bonds], through either a private placement to an investor or investors, or a public offering; and

WHEREAS, the City seeks current authorization for the execution and delivery by the City of documents relating to the issuance of the Refunding Bonds; and

WHEREAS, the Authority is authorized to issue the Refunding Bonds under Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 (commencing with Section 53580) of the Government Code; and

WHEREAS, there has been presented to this meeting the following documents relating to the issuance of the Refunding Bonds:

a. a proposed form of Amended and Restated Site Lease between the City and the Authority, a copy of which is on file in the office of the City Clerk as document number 00-**19573**⁻¹ under which the City will lease the Site to the Authority [Site Lease]; and

b. a proposed form of Amended and Restated Ballpark Facility Lease between the Authority and the City, a copy of which is on file in the office of the City Clerk as document number 00-**19573**⁻² under which the Authority will lease the Site and the Ballpark Facility to the City [Facility Lease]; and

c. a proposed form of Second Reaffirmation of Assignment Agreement between the Authority and Wells Fargo Bank, National Association [Bond Trustee], a copy of

which is on file in the office of the City Clerk as document number 00-19573⁻³, under which the Authority reaffirms its assignment to the Bond Trustee for the benefit of bondholders its rights under the Site Lease and Facility Lease [Assignment Agreement]; and

d. a proposed form of Indenture between the Authority and the Bond Trustee, a copy of which is on file in the office of the City Clerk as document number 00-19573⁻⁴ under which the Authority will issue its Lease Revenue Refunding Bonds, Series 2007A (Ballpark Refunding) [Indenture]; and

e. a proposed form of Escrow Instructions to the Bond Trustee from the Authority, a copy of which is on file in the office of the City Clerk as document number 00-19573⁻⁵, under which the Bond Trustee will hold, invest and apply monies for the redemption of the Original Bonds [Escrow Instructions]; and

f. a proposed form of Continuing Disclosure Certificate, a copy of which is on file in the office of the City Clerk as document number 00-19573⁻⁶, under which the City will be committing to fulfill certain annual and event disclosure commitments [Continuing Disclosure Certificate]; and

g. a proposed form of Purchase Agreement, a copy of which is on file in the office of the City Clerk as document number 00-19573⁻⁷, by and among the City, the Authority and Bank of America, N.A. as purchaser [Purchase Agreement]; 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,

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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 City Council so finds and determines.

Section 2. The form and content of the Site Lease by and between the City and the Authority, pursuant to which the City agrees to lease the Site to the Authority, is hereby authorized and approved. Any of the Mayor, the Chief Operating Officer or the Chief Financial Officer and each of them or any of their respective designees [each, an Authorized Signatory] are hereby severally authorized and directed, for and in the name 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 or her specified designees, and each of them, are authorized and directed to attest thereto, with such additions and changes therein as any Authorized Signatory, in consultation with the City Attorney, shall require or approve as being in the best interests of the City, and as are 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 the Site Lease.

Section 3. The form and content of the Facility Lease by and between the Authority and the City, pursuant to which the Authority agrees to lease to the City the Site and the Facility, is hereby authorized and approved. Any Authorized Signatory is hereby severally authorized and directed, for and in the name 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 or her specified designees, and each of them, are authorized and directed to attest thereto, with such additions and changes therein as any Authorized Signatory, in consultation with the City Attorney, shall require or approve as being in the best interests of the City, and as are 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 the Facility Lease.

Section 4. The form and content of the Assignment Agreement by and between the Authority and the Bond Trustee, pursuant to which the Authority assigns to the Bond Trustee the Authority's rights under the Site Lease and Facility Lease, and the execution, delivery and performance thereof by the Authority, are hereby authorized and approved. Each Authorized Signatory is authorized and directed to take such action as is necessary or appropriate to effectuate the transactions set forth in the Assignment Agreement with such additions and changes therein as any Authorized Signatory shall require or approve as being in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approval to be conclusively evidenced by the Authority's execution and delivery thereof.

Section 5. The form and content of the Indenture by and between the Authority and the Bond Trustee, pursuant to which the Authority will issue its Refunding Bonds, and the execution, delivery and performance thereof by the Authority, are hereby authorized and approved. Each Authorized Signatory is authorized and directed to take such action as is necessary or appropriate to effectuate the transactions set forth in the Indenture with such additions and changes therein as any Authorized Signatory shall require or approve as being in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approval to be conclusively evidenced by the Authority's execution and delivery thereof.

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Section 6. The form and content of the Escrow Instructions by and between the Authority and the Bond Trustee, pursuant to which the Authority will instruct the Bond Trustee, as Escrow Agent, to hold, invest and apply monies for the redemption of the Original Bonds, and the execution, delivery and performance thereof by the Authority, are hereby authorized and approved. Each Authorized Signatory is authorized and directed to take such action as is necessary or appropriate to effectuate the transactions set forth in the Escrow Instructions with such additions and changes therein as any Authorized Signatory shall require or approve as being in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approval to be conclusively evidenced by the Authority's execution and delivery thereof.

Section 7. 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 Seventy-two Million Dollars (\$172,000,000) by private or public sale provided that: (i) the interest rate on the Refunding Bonds does not exceed the maximum legal rate; (ii) the present value savings generated by the refunding of the Original Bonds is not less than three percent (3.0%) of the principal amount of the outstanding Original Bonds; (iii) the final maturity of the Refunding Bonds shall not be later than 2032; and (iv) in the event the Refunding Bonds are to be sold in a public offering there first be presented to the Disclosure Practices Working Group and this Council for its approval a form of preliminary official statement and a form of purchase contract among the City, the Authority and the Underwriters named therein.

Section 8. The anticipated source of revenue for payment of the Refunding Bonds hereby authorized is the Base Rental Payments under and as defined in the Facility Lease.

Section 9. The form and content of the Continuing Disclosure Certificate, pursuant to which the City agrees to make certain disclosures as specified therein are hereby authorized and approved. Any Authorized Signatory is hereby severally authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Continuing Disclosure Certificate in substantially the form presented to and considered at this meeting, and the City Clerk or her specified designees, and each of them, are authorized to attest thereto, with such additions and changes therein as any Authorized Signatory shall require or approve as being in the best interests of the City, and as are 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 the Continuing Disclosure Certificate.

Section 10. The form and content of the Purchase Agreement are hereby authorized and approved. Any Authorized Signatory is hereby authorized and directed for and in the name and on behalf of the City, to execute and deliver the Purchase Agreement in connection with the purchase and sale of the Refunding Bonds and the refunding of the Original Bonds, substantially in the form presented to and considered at this meeting, with such changes and additions therein as such Authorized Signatory shall require or approve as being in the best interests of the City and as are approved as to form by the City Attorney or his specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 11. Any Authorized Signatory, and each of them, are hereby authorized and directed to take all actions and execute any and all documents, including reimbursement agreements or similar instruments, 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 12. 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 (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 and the Public Record Reporter, newspapers of general circulation, published and circulated in the City.

Section 13. Any Authorized Signatory, and each of them, is hereby authorized to make necessary arrangements with an appropriate title insurance company to issue a title insurance binder with respect to land that may become 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 14. The City Attorney or his specified designee is authorized to retain Nixon Peabody LLP as bond counsel for the City and the Authority [Bond Counsel], and Hawkins Delafield & Wood LLP as disclosure counsel for the City and the Authority [Disclosure Counsel] under such contracts or other arrangements as the City Attorney or his specified designee shall approve as being in the best interests of the City. The City Attorney or his specified designee is further authorized to pay the fees of Bond Counsel in an amount not to exceed \$280,000 plus reasonable out-of-pocket expenses and to pay Disclosure Counsel an amount not to exceed \$100,000 plus expenses in each case not to exceed \$5,000.

Section 15. The 2003 Ordinance and the 2003 Resolution are hereby rescinded and shall be of no further force or effect.

Section 16. All actions heretofore taken by any officers, 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 documents referenced herein or the refinancing of the Project, are hereby approved, confirmed and ratified; and such other officials, employees and agents of the City as may be authorized by any Authorized Signatory 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 including, without limitation, payment of necessary and appropriate fees and expenses of bond counsel, disclosure counsel, financial advisor and other professionals retained by the City under contracts approved by the City Attorney 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 Refunding Bonds and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 17. 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 18. 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
For Mark D. Blake
Chief Deputy City Attorney

MDB::ai:pev
12/21/06
Or.Dept:Fin.
O-2007-73

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 1/30/2007.

ELIZABETH S. MALAND
City Clerk

By [Signature]
Deputy City Clerk

Approved: 1/31/07
(date)

[Signature]
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor