

ORDINANCE NUMBER O- 20004 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 16 2010

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A TAXABLE QUALIFIED ENERGY CONSERVATION BOND EQUIPMENT LEASE AGREEMENT FOR THE PURPOSE OF FINANCING THE ACQUISITION OF CERTAIN ENERGY CONSERVATION EQUIPMENT IN A PRINCIPAL AMOUNT NOT TO EXCEED \$13.1 MILLION AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, on February 24, 2010, the City Council approved Resolution No. R-305594 authorizing the City to apply for state or federal funding to expand the City's energy efficient Broad Spectrum Street Lighting program; and

WHEREAS, the City received an allocation pursuant to the American Recovery and Reinvestment Act of 2009 to use \$13,141,596.29 of Qualified Energy Conservation Bonds (QECB), tax credit bonds that may be used to fund qualified energy conservation projects under Internal Revenue Code section 54D(f) (Code), as amended, for the purpose of financing the cost of expanding the Broad Spectrum Street Lighting program; and

WHEREAS, the City now desires to use its QECB allocation to expand the Broad Spectrum Street Lighting program by acquiring and leasing replacement street lights and related improvements and equipment that constitute a qualified energy conservation project (Project) under the Code; and

WHEREAS, the City solicited proposals to finance the acquisition of the Project and received a total of five proposals; and

WHEREAS, Banc of America Leasing & Capital, LLC (Purchaser) submitted a proposal to allow the City to acquire the Project by purchasing the City's QECBs through an equipment lease agreement and staff has determined that it would be advantageous for the City to accept the Purchaser's proposal; and

WHEREAS, the Purchaser's proposal does not require the use of a debt service reserve fund and the lack of a debt service reserve fund will not have an impact on the interest rate paid by the City under the Purchaser's proposal; and

WHEREAS, the City Council acknowledges that the proposal is an exception to the debt service reserve requirements of section 5.7 of the City's Debt Policy (2009);

WHEREAS, there has been presented to the City Council an agreement to enter into a binding lease agreement (Contract to Execute Lease), a Taxable QECB Equipment Lease Agreement (Lease Agreement), and an Acquisition Fund Agreement (Acquisition Fund Agreement), the forms of which are on file with the City Clerk's Office as Document Nos. 00-20004-¹, Document No. 00-20004-², and Document No. 00-20004-³ respectively; and

WHEREAS, the City Attorney's Office has, through a competitive process, selected the law firm of Orrick, Herrington & Sutcliffe to serve as Special Counsel to the City in connection with the QECBs; NOW, THEREFORE,

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

Section 1. That the Mayor, Chief Operating Officer, or the Chief Financial Officer and each of them or any of their respective designees (each, an Authorized Signatory) is hereby authorized to execute for and on behalf of the City of San Diego, a Contract to Execute Lease, a

Lease Agreement, and an Acquisition Fund Agreement, all in substantially the form presented to this Council, with such additions and changes as any Authorized Signatory shall, in consultation with the City Attorney, recommend as being in the best interests of the City, including, without limitation, changes to the Acquisition Period, as such term is defined in the Lease Agreement, provided, however, that: (1) the principal component amount shall not exceed \$13.1 million; (2) the contract rate of the interest component shall not exceed seven percent (7%); (3) the lease term shall not exceed the expected useful life of the Project or the maximum permitted by law, whichever is less; and (4) the City Comptroller shall first certify that funds are available to make lease payments under the Lease Agreement.

Section 2. That the Chief Financial Officer is authorized to expend an amount not to exceed \$13.1 million from the issuance of the QECBs to fund the Project and to fund costs of issuance related to the QECBs.

Section 3. That the City Attorney is hereby authorized to appoint Orrick, Herrington & Sutcliffe, LLP as Special Counsel to the City in relation to the QECBs; and the City is authorized to pay the fees and expenses of Orrick, Herrington & Sutcliffe, LLP, in an amount not to exceed \$50,000, contingent upon the successful close of this transaction.

Section 4. That all actions taken by any officials, employees or agents of the City with respect to the QECBs or in connection with or related to any of the agreements referenced herein are hereby approved, confirmed, and ratified; and such other officials, employees, and agents of the City as may be authorized by an 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 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 transactions


contemplated herein and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 5. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Brant C. Will
Deputy City Attorney

BCW:jdf:jab
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Or.Dept: Debt Mgmt.

I hereby certify that the foregoing Ordinance, was passed by the Council of the City of San Diego, at this meeting of NOV 9 2010

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 11-16-10
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor