

ORDINANCE NUMBER O- 20150 (NEW SERIES)

DATE OF FINAL PASSAGE APR 23 2012

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A CONVENTION CENTER FACILITY LEASE AND BOND PURCHASE AGREEMENT; APPROVING THE ISSUANCE AND SALE BY THE CONVENTION CENTER EXPANSION FINANCING AUTHORITY OF AN AMOUNT NOT TO EXCEED \$159,000,000 OF THE AUTHORITY'S LEASE REVENUE REFUNDING BONDS, SERIES 2012A, AND THE EXECUTION AND DELIVERY BY SUCH AUTHORITY OF AN AMENDED AND RESTATED EXPANSION LEASE, THE CONVENTION CENTER FACILITY LEASE AND AN INDENTURE; AND APPROVING OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California authorizes and empowers local agencies to form a joint powers authority and Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (Marks-Roos Local Bond Pooling Act of 1985) authorizes and empowers such an authority to issue bonds for the purpose of financing and refinancing public capital improvements or projects to further public purposes and effect significant public benefits, as determined by the local agency; and

WHEREAS, the City of San Diego (City) and the San Diego Unified Port District (District) entered into a Joint Exercise of Powers Agreement effective April 23, 1996, establishing the Convention Center Expansion Financing Authority (Authority), a California joint exercise of powers authority duly organized to provide financing assistance to the City and the District relating to the Convention Center; and

WHEREAS, at the request of the City, the Authority previously issued its \$205,000,000 Lease Revenue Bonds, Series 1998A, of which \$150,720,000 are currently outstanding (Series 1998A Bonds), to finance the 1998 Expansion to the Convention Center (as defined in the Facility Lease, defined below); and

WHEREAS, the Series 1998A Bonds are secured by the City's base rental payments payable by the City under a Convention Center Facility Lease, dated as of September 1, 1998 (1998 Facility Lease), between the Authority and the City, pursuant to which the Authority subleased certain real property (Expansion Site) and the 1998 Expansion (collectively, Leased Property) to the City; and

WHEREAS, the City has determined that: (i) the issuance of the Series 2012A Refunding Bonds (defined below) by the Authority to refund all of the Series 1998A Bonds will achieve interest savings and will benefit the inhabitants of the City; (ii) there will be significant public benefits (within the meaning of Section 6586 of the Government Code) to be derived from securing the assistance of the Authority to refund all of the Series 1998A Bonds due to certain demonstrable savings in effective interest rates; and (iii) the facilities financed by the Series 1998A Bonds are located within the geographic boundaries of the City; and

WHEREAS, the Council of the City (Council) made the aforementioned determinations after holding a public hearing on the date thereof and hearing all interested persons desiring to be heard; and

WHEREAS, a notice of a public hearing concerning the adoption of this Ordinance was duly published once at least ten days prior to such hearing in a newspaper of general circulation in the City; and

WHEREAS, in order to refund the Series 1998A Bonds and to achieve such public purposes (Plan of Refunding), the City has determined to request and approve the Authority's issuance, from time to time between now and December 31, 2012, in one or more series, of not to exceed \$159,000,000 aggregate principal amount of its Lease Revenue Refunding Bonds, Series 2012A (Series 2012A Refunding Bonds) pursuant to the Marks-Roos Local Bond Pooling Act of 1985 and secured by an Indenture (Indenture), by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (Trustee); and

WHEREAS, the District is the fee owner of the Expansion Site free and clear of all liens, claims, encumbrances and the District has agreed to lease the Leased Property to the Authority pursuant to the terms and conditions of the Expansion Lease in connection with the Plan of Refunding and the sale and issuance of the Series 2012A Refunding Bonds; and

WHEREAS, in order to provide for the repayment of the Series 2012A Refunding Bonds, the Authority will sublease the Leased Property to the City pursuant to a Facility Lease (Facility Lease), under which the City will agree to make base rental payments to the Authority (Base Rental Payments), which will be calculated to be sufficient to enable the Authority to pay the principal of and interest and premium (if any) on the Series 2012A Refunding Bonds when due and payable; and

WHEREAS, the debt service reserve fund for the Series 1998A Bonds is funded with a surety bond and contains no cash and if a cash debt service reserve fund were required for the Series 2012A Refunding Bonds the refunding of the Series 1998A Bonds would not be cost effective and, therefore, a debt service reserve fund is not included in the Plan of Refunding; and

WHEREAS, the City has determined that the Series 2012A Refunding Bonds will be sold by a negotiated sale pursuant to the terms of a Bond Purchase Agreement (Purchase Agreement)

among the City, the Authority and Stifel Nicolaus & Company Incorporated, dba Stone & Youngberg, a Division of Stifel Nicolaus, as representative of the underwriters therein named (collectively, Underwriters); and

WHEREAS, time is of the essence and the Council finds it prudent to act quickly to refund the Series 1998A Bonds while the interest rates currently available for the Series 2012A Refunding Bonds will provide interest savings and to approve at this time the necessary documents and the sale and issuance of the Series 2012A Refunding Bonds; and

WHEREAS, there has been presented to this meeting the following documents relating to the sale and issuance of the Series 2012A Refunding Bonds:

1. a proposed form of the amended and restated Expansion Lease, between the District and the Authority, a copy of which is on file in the office of the City Clerk as document number 00-20150-1, under which the District will lease the Leased Property to the Authority; and

2. a proposed form of the Facility Lease, a copy of which is on file in the office of the City Clerk as document number 00-20150-2, under which the Authority will sublease the Leased Property to the City and the City agrees to pay Base Rental Payments adequate to pay the Series 2012A Bonds and other payments;

3. a proposed form of the Indenture, a copy of which is on file in the office of the City Clerk as document number 00-20150-3, under which the Authority will issue its Series 2012A Refunding Bonds and may subsequently issue, at the request of the City, Additional Bonds (as defined in the Indenture);

4. a proposed form of the Continuing Disclosure Certificate, a copy of which is on file in the office of the City Clerk as document number 00-20150-4; and

5. a proposed form of Purchase Agreement, a copy of which is on file in the office of the City Clerk as document number 00-~~20160~~-5 (the documents described in paragraphs 1 through 5 are collectively referred to as the Financing Documents).

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. The Council hereby finds and determines that the statements set forth above in the recitals to this Ordinance are true and correct.

Section 2. The Council hereby finds that the Plan of Refunding, as described in the recitals to this Ordinance, will provide significant public benefits in accordance with the criteria specified in Section 6586 of the Government Code.

Section 3. The Council hereby authorizes and approves, and requests the Authority to approve and authorize, the issuance and sale by the Authority of its Series 2012A Refunding Bonds from time to time between now and December 31, 2012, in one or more series, in an aggregate principal amount not to exceed One Hundred Fifty-nine Million Dollars (\$159,000,000) by negotiated sale, provided that: (i) the final maturity of the Series 2012A Refunding Bonds shall not be later than 2028, (ii) there shall first be presented to the Disclosure Practices Working Group and this Council for approval a form of preliminary official statement; and (iii) the Chief Financial Officer or Chief Operating Officer determines that there is an economic benefit to the City in the form of aggregate net present value savings of at least 3%, expressed as a percentage of the par amount of the outstanding Series 1998A Bonds, which determination will be conclusively evidenced by execution by the City of a Purchase Agreement

relating to the Series 2012A Refunding Bonds among the City, the Authority and the Underwriters.

Section 4. The form and content of the Indenture, and the execution, delivery and performance thereof by the Authority, are 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) is severally 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, all such changes therein to be determined by any Authorized Signatory, in consultation with the City's Financial Advisor for the Series 2012A Refunding Bonds and the City Attorney, as necessary or desirable and that such Authorized Signatory believes to be in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approvals to be conclusively evidenced by a certificate of such Authorized Signatory.

Section 5. The form and content of the Facility Lease is hereby authorized and approved. Each 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's Financial Advisor for the Series 2012A Refunding Bonds and the City Attorney, shall determine are necessary or desirable and that such Authorized Signatory believes to be in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approvals to be

conclusively evidenced by such Authorized Signatory's execution and delivery of the Facility Lease.

Section 6. The form and content of the Expansion Lease, and the execution, delivery and performance thereof by the Authority, are hereby authorized and approved. Any Authorized Signatory is severally authorized and directed to take such actions as are necessary or appropriate to effectuate the transactions set forth in such Expansion Lease, with such additions and changes therein approved by any Authorized Signatory, in consultation with the City Attorney, as necessary or desirable and that such Authorized Signatory believes to be in the best interests of the City, and as are approved as to form by the City Attorney or his specified designee, such approvals to be conclusively evidenced by a certificate of such Authorized Signatory.

Section 7. The source of revenue for payment of the Series 2012A Refunding Bonds hereby authorized is the Base Rental Payments to be made by the City under and as defined in the Facility Lease.

Section 8. The form and content of the Continuing Disclosure Certificate is hereby authorized and approved. The Chief Financial Officer or Chief Operating Officer or his/her designee is hereby authorized and directed for and in the name and on behalf of the City, to execute and deliver that Continuing Disclosure Certificate in connection with the purchase and sale of the Series 2012A Refunding Bonds, substantially in the form presented to and considered at this meeting, with such changes and additions therein as such signatory shall determine are necessary or desirable and believes to be in the best interest of the City and as are approved as to form by the City Attorney or his specified designee, such approvals to be conclusively evidenced by the execution and delivery thereof.

Section 9. The form and content of the Purchase Agreement is hereby authorized and approved. Each Authorized Signatory is hereby severally 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 Series 2012A Refunding Bonds, substantially in the form presented to and considered at this meeting, with such changes and additions therein as such Authorized Signatory shall determine are necessary or desirable and that any such Authorized Signatory believes are in the best interests of the City and as are approved as to form by the City Attorney or his specified designee, such approvals to be conclusively evidenced by the execution and delivery thereof. Such changes may include changes to reflect the issuance in more than one series.

Section 10. Authorized officers of the City are hereby authorized and directed to pay all the fees and other costs of issuance of the Series 2012A Refunding Bonds in accordance with the Purchase Agreement and as otherwise agreed with the City and the respective parties thereto, including applicable CDIAC fees and printer fees.

Section 11. All actions already taken by any officers, employees or agents of the City for the issuance, delivery or sale of the Series 2012A Refunding Bonds, or in connection with or related to any of the Financing Documents or of the other agreements or documents referenced herein or related to consummating the Plan of Refunding, are hereby approved, confirmed and ratified. Any Authorized Signatory, and each of them acting alone, is hereby severally authorized and directed, for and in the name and on behalf of the City: (a) to do any and all things and take any and all actions consistent with this Ordinance and the Financing Documents and other documents authorized by this Ordinance; and (b) to execute and deliver any and all certificates, agreements and other documents (including a tax compliance certificate



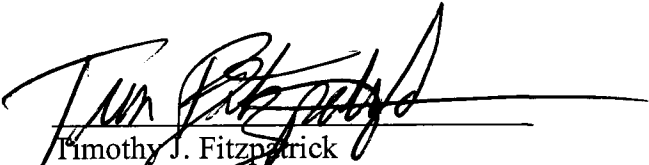
and any escrow agreements for the refunding of the Series 1998A Bonds) required by the Purchase Agreement or any other Financing Document, or which they, or any of them, deem necessary or advisable to effectuate the purposes of this Ordinance, to consummate the lawful issuance, delivery and disbursement of proceeds of the Series 2012A Refunding Bonds in accordance herewith and to consummate the transactions authorized hereby and evidenced by the Financing Documents.

In addition, any Authorized Signatory, in consultation with the Chief Financial Officer or Chief Operating Officer, is hereby specifically authorized to approve additions and changes to the Financing Documents and the other documents authorized by this Ordinance (including, but not limited to changes to reflect the issuance of the Series 2012A Refunding Bonds in more than one series), which additions and changes the Chief Financial Officer or Chief Operating Officer shall believe, with the advice of the City's Financial Advisor for the Series 2012A Refunding Bonds, to be necessary or desirable and in the best interest of the City, in light of market conditions, such determination shall be conclusively evidenced by the execution and delivery of such Financing Documents and other documents by any Authorized Representative of the City; and provided further that no such addition or changes may be inconsistent with limitations in Section 3 hereof.

Section 12. A full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the Council and the public a day prior to its final passage.

Section 13. This Ordinance shall take effect and be in force on the thirtieth day from and after the date of its final passage.

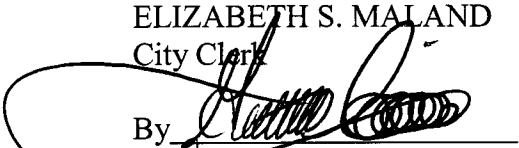
APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Timothy J. Fitzpatrick  
Deputy City Attorney

TF:sc  
3/2/12  
Or.Dept: Debt Management  
Doc. No.: 331109

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 10 2012.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 4.23.12  
(date)

  
JERRY SANDERS, Mayor

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

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JERRY SANDERS, Mayor