

ORDINANCE NUMBER O- 20249 (NEW SERIES)DATE OF FINAL PASSAGE APR 11 2013

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE AMENDMENTS TO SITE LEASE, AMENDMENTS TO FACILITIES LEASE AND BOND PURCHASE AGREEMENTS; AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF ONE OR MORE SUPPLEMENTAL INDENTURES BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO; AUTHORIZING THE CITY ATTORNEY TO APPOINT BOND COUNSEL AND DISCLOSURE COUNSEL; APPROVING AND AUTHORIZING THE ISSUANCE AND SALE IN ONE OR MORE SERIES OF THE AUTHORITY'S LEASE REVENUE BONDS AND LEASE REVENUE REFUNDING BONDS; 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), the Successor Agency to the Redevelopment Agency of the City of San Diego, and the Housing Authority of the City of San Diego have heretofore entered into a Third Amended and Restated Joint Exercise of Powers Agreement dated January 1, 2013 (Joint Powers Agreement), which created and established the Public

Facilities Financing Authority of the City of San Diego (Authority) for the purpose, among others, of issuing its bonds to be used to provide financial assistance to the City to finance and refinance public capital improvements; and

WHEREAS, the Authority has previously entered into an Indenture, dated as of July 1, 2012 (the Master Indenture), with Wells Fargo Bank, National Association, as trustee (the Trustee), to provide for the issuance of lease revenue bonds pursuant to the terms of the Master Indenture for the benefit of the City; and

WHEREAS, pursuant to the Master Indenture, the Authority has issued its Lease Revenue Bonds, Series 2012A (Capital Improvement Projects) in the aggregate principal amount of \$72,000,000 to finance certain capital projects (the Series 2012A Bonds) and its Lease Revenue Refunding Bonds, Series 2012B (Fire and Life Safety Facilities Refunding) in the aggregate principal amount of \$18,745,000 to refund various obligations of the City and the Authority (the Series 2012B Bonds, and together with the Series 2012A Bonds, the Prior Bonds); and

WHEREAS, the City has sold its 2003 Certificates of Participation (1993 Balboa Park/Mission Bay Refunding) and The City of San Diego/MTDB Authority has issued its 2003 Lease Revenue Refunding Bonds (San Diego Old Town Light Rail Transit Extension Refunding) (the 2003 Lease Revenue Refunding Bonds), of which on January 31, 2013 there will be \$6,745,000 and \$10,025,000 aggregate principal amount outstanding, respectively (collectively, the Refunded Bonds); and

WHEREAS, pursuant to Section 2.13 of the Master Indenture, the Authority may at any time issue additional bonds pursuant to Supplemental Indentures; and

WHEREAS, the City has determined that: (i) the issuance of Additional Bonds (defined below) by the Authority is in the public interest and will benefit the inhabitants of the City; (ii) there are significant public benefits (within the meaning of section 6586 of the Government Code) to be derived from securing the assistance of the Authority to finance the costs of the acquisition, construction, installation and equipping of certain capital improvement projects of the City (collectively, the Projects); and (iii) the Projects are or will be at various locations within the geographic boundaries of the City; and

WHEREAS, the City has determined that: (i) the issuance of Additional Refunding Bonds (defined below) by the Authority to refund the currently outstanding Refunded Bonds will achieve debt service savings and will benefit the inhabitants of the City; and (ii) there are significant public benefits (within the meaning of section 6586 of the Government Code) to be derived from securing the assistance of the Authority to finance the costs of refunding the Refunded Bonds (the Refunding); and

WHEREAS, the Council of the City 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 five days prior to such hearing in a newspaper of general circulation in the City; and

WHEREAS, in order to finance the Projects with net bond proceeds of \$35,000,000 and to achieve such public purposes, and to timely issue bonds when funds are needed for the Projects, the City has determined to request and approve the Authority's issuance in one or more series between now and June 30, 2014 of not to exceed \$36,500,000 aggregate principal amount

of its Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds (the Additional Bonds) pursuant to the Marks-Roos Local Bond Pooling Act of 1985 and secured by the Master Indenture, as supplemented and amended by one or more Supplemental Indentures, each by and between the Authority and the Trustee; and

WHEREAS, in order to finance the Refunding and to achieve such public purposes, and to timely issue bonds when savings are available, the City has determined to request and approve the Authority's issuance between now and June 30, 2014 of not to exceed \$15,500,000 aggregate principal amount of its Public Facilities Financing Authority of the City of San Diego Lease Revenue Refunding Bonds (the "Additional Refunding Bonds" and, together with the Additional Bonds, the "Bonds") pursuant to the Marks-Roos Local Bond Pooling Act of 1985 and secured by the Master Indenture, as supplemented and amended by one or more Supplemental Indentures, each by and between the Authority and the Trustee; and

WHEREAS, in order to provide for the payment, equally and ratably, of the Prior Bonds and the Bonds, the City has leased certain real property of the City and will lease additional real property of the City (collectively, the City Property) to the Authority pursuant to the Site Lease, dated as of July 1, 2012 (the Master Site Lease), as amended and supplemented by one or more amendments to the Master Site Lease, and the Authority will lease the City Property, along with certain interest in real property of the San Diego Metropolitan Transit System (the MTS Property, and collectively with the City Property, the Leased Property, to the City pursuant to the Facilities Lease, dated as of July 1, 2012 (the Master Facilities Lease), as amended and supplemented by one or more amendments to Master Facilities Lease (as supplemented and amended, the 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 Prior Bonds and the Bonds when due and payable; and

WHEREAS, the City agrees to release the MTS Property from the Leased Property when the 2003 Lease Revenue Refunding Bonds mature or are otherwise paid off; and

WHEREAS, the City has determined that the Additional Bonds and the Additional Refunding Bonds be sold by a negotiated sale pursuant to the terms of one or more Bond Purchase Agreements (Purchase Agreements) among the City, the Authority and the underwriters therein named (collectively the Underwriters); and

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

1. a proposed form of First Amendment to Site Lease between the City and the Authority, a copy of which is on file in the office of the City Clerk as Document No. 00- ~~20249~~, under which the City will lease the City Property to the Authority;

2. a proposed form of First Amendment to Facilities Lease between the Authority and the City, a copy of which is on file in the office of the City Clerk as document No. 00- ~~20249~~<sup>2</sup>, under which the Authority will lease the Leased Property to the City;

3. a proposed form of First Supplemental Indenture between the Authority and the Trustee, a copy of which is on file in the office of the City Clerk as Document No. 00- ~~20249~~<sup>3</sup>, under which the Authority will issue one or more series of the Additional Bonds and Additional Refunding Bonds;

4. a proposed form of Purchase Agreement regarding the Additional Bonds and the Additional Refunding Bonds among the City, the Authority and the underwriters therein

named, a copy of which is on file in the office of City Clerk as Document No. 00- ~~20249~~-4, under which the Additional Bonds and Additional Refunding Bonds will be sold; and

5. a proposed form of Continuing Disclosure Certificate of the City, a copy of which is on file in the office of the City Clerk as Document No. 00- ~~20249~~-5 (the documents described in paragraphs 1 through 5, are collectively referred to as the “Financing Documents”); and

WHEREAS, pursuant to Chapter 730 of the statutes of 1976, section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

WHEREAS, the Council does hereby find that the deposit and withdrawal of the proceeds of the sale of Additional Bonds and Additional Refunding Bonds in the Local Agency Investment Fund in accordance with the provisions of section 16429.1 of the California Government Code for the purpose of investment as stated therein are in the best interests of the City; 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,

BE IT ORDAINED by the Council of The City of San Diego (the Council), 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 financing of the Projects and the refunding of the Refunded Bonds, as described in the recitals to this Ordinance, will provide significant public benefits in accordance with the criteria specified in section 6586 of the California Government Code.

Section 3. The form and content of the First Amendment to Site Lease, pursuant to which the City leases the City Property to 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) are hereby severally authorized and directed, for and in the name and on behalf of the City, to execute and deliver, between now and June 30, 2014, one or more amendments to the Master Site Lease substantially in the form of the First Amendment to Site Lease 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 (including, without limitation, the description of the City Property) as any Authorized Signatory, in consultation with the City Attorney, shall determine are necessary or desirable and shall require or approve 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 thereof.

Section 4. The form and content of the First Amendment to Facilities Lease, pursuant to which the Authority leases to the City the Leased Property and the City agrees to pay Base Rental Payments and other payments, are 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, between now and June 30, 2014, one or more amendments to the

Master Facilities Lease substantially in the form of the First Amendment to Facilities Lease 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 (including, without limitation, the description of the Leased Property) as any Authorized Signatory, in consultation with the City Attorney, shall determine are necessary or desirable and shall require or approve 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 thereof.

Section 5. The form and content of the First Supplemental Indenture, pursuant to which the Authority will issue one or more series of Additional Bonds and Additional Refunding Bonds, and the execution, delivery and performance by the Authority, between now and June 30, 2014, of one or more Supplemental Indentures substantially in the form of the First Supplemental Indenture presented to and considered at this meeting, are hereby authorized and approved. Each Authorized Signatory is severally authorized and directed to take such action as is necessary or appropriate to effectuate the transactions set forth in the Supplemental Indentures with such additions and changes therein as any Authorized Signatory shall determine are necessary or desirable and shall require or approve 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 will be conclusively evidenced by such Authorized Signatory's execution and delivery of its approval thereof.

Section 6. The City Attorney or his specified designee is authorized to retain Nixon Peabody LLP as bond counsel and disclosure counsel for the City and the Authority in



connection with the issuance of the Bonds under such contracts or other arrangements as the City Attorney or his specified designee shall approve and believes to be in the best interests of the City. Such contracts or other arrangements shall be in an amount not to exceed \$75,000 for the first issue of Bonds and \$75,000 for each subsequent issue plus, in each case, reasonable out-of-pocket expenses not to exceed \$5,000.

Section 7. The City hereby authorizes and approves, and requests the Authority to approve and authorize, the issuance and sale by the Authority, between now and June 30, 2014, of its Additional Bonds in one or more series in a total aggregate principal amount not to exceed \$36,500,000 by negotiated sale, provided that: (i) the true interest cost of each series of the Additional Bonds shall not exceed 7%, (ii) the final maturity of each series of the Additional Bonds shall not be later than 30 years following their date of issuance, and (iii) there shall first be presented to the Disclosure Practices Working Group and this Council for approval a form of preliminary official statement. Each of the Chief Financial Officer and the Chief Operating Officer, in consultation with the City's financial advisor, is hereby authorized to approve the Additional Bond pricing, the timing and number of Additional Bond issues, the redemption, maturities, interest rates, and other Additional Bond features, and the underwriters for each series of Additional Bonds.

Section 8. The City hereby authorizes and approves, and requests the Authority to approve and authorize, the issuance and sale by the Authority, between now and June 30, 2014, of its Additional Refunding Bonds in a total aggregate principal amount not to exceed \$15,500,000 by negotiated sale or competitive bid, provided that: (i) the Chief Financial Officer or Chief Operating Officer determines in a certificate that either: (A) there is an economic benefit in the form of aggregate net present value savings of at least 3 percent, expressed as a

percentage of the par amount of the Refunded Bonds refunded; or (B) the Chief Financial Officer or the Chief Operating Officer determines that refunding all or a portion of the Refunded Bonds is in the best financial interest of the City, and (ii) there shall first be presented to the Disclosure Practices Working Group and this Council for approval a form of preliminary official statement. Each of the Chief Financial Officer and the Chief Operating Officer, in consultation with the City's financial advisor, is hereby authorized to approve the Additional Refunding Bond pricing, the timing and number of Additional Refunding Bond issues, the redemption, maturities, interest rates, and other Additional Refunding Bond features, and the underwriters for each series of Additional Refunding Bonds.

Section 9. The form and content of the Purchase Agreement are 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, between now and June 30, 2014, one or more Purchase Agreements in connection with the purchase and sale of the Additional Bonds and Additional Refunding Bonds, substantially in the form presented to and considered at this meeting, with such changes and additions therein, including without limitation naming the underwriters for each issuance of Additional Bonds and Additional Refunding Bonds, as such Authorized Signatory shall determine are necessary and 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 of the Purchase Agreements.

Section 10. The anticipated source of revenue for payment of the Additional Bonds and the Additional Refunding Bonds hereby authorized is the Base Rental Payments to be made by the City under and as defined in the Lease.

Section 11. The form and content of the Continuing Disclosure Certificate are 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 one or more Continuing Disclosure Certificates in connection with the purchase and sale of the Additional Bonds and the Additional 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 shall require or approve 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 12. Authorized officers of the City are hereby authorized and directed to pay all the fees and other costs of issuance of the Additional Bonds and Additional Refunding Bonds in accordance with the Purchase Agreements and as otherwise agreed with the City and the respective parties thereto, including applicable California Debt and Investment Advisory Commission fees and printer fees.

Section 13. All actions heretofore taken by any officers, employees or agents of the City with respect to the issuance, delivery or sale of the Additional Bonds or the Additional Refunding Bonds, or in connection with or related to any of the Financing Documents or of the other documents referenced herein or related to consummating the financing of the Projects or the Refunding, are hereby approved, confirmed and ratified. Any Authorized Signatory and any other officers, employees or agents of the City as may be authorized by the Mayor, the Chief Financial Officer or the Chief Operating Officer, and each of them acting alone, is hereby severally authorized and directed, for and in the name and on behalf of the City: (i) to do any and all things and take any and all actions, from time to time, consistent with this Ordinance and the

Financing Documents and other documents authorized by this Ordinance 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; and (ii) to execute and deliver any and all certificates, agreements and other documents (including, without limitation, a tax compliance certificate) required pursuant to the terms of the Purchase Agreements or any other Financing Document, or which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Additional Bonds and the Additional Refunding Bonds and the disbursement of proceeds thereof in accordance with this Ordinance and to consummate the transactions authorized hereby and evidenced by the Financing Documents. In addition, each of the Mayor, the Chief Financial Officer and the Chief Operating Officer is hereby authorized to approve additions and changes to the Financing Documents and the other documents authorized by this Ordinance (including, but not limited to, the establishment of, or changes to the level of, any debt service reserve fund securing the Bonds, establishing the redemption provisions of the Bonds, determining which capital improvement Projects are financed with proceeds of the Additional Bonds, and determining whether any of the Additional Refunding Bonds are to be sold by competitive bid or negotiated sale to produce maximum refunding savings); which additions and changes the Mayor, the Chief Financial Officer or the Chief Operating Officer shall believe, with the advice of the City's Financial Advisor for the Additional Bonds and the Additional Refunding Bonds, to be in the best interest of the City in light of the financing costs, credit and market conditions, such determination shall be conclusively evidenced by the execution and delivery of such Financing Documents and other documents by the City; and provided further that no such addition or changes may be inconsistent with limitations in Sections 8 or 9 hereof.

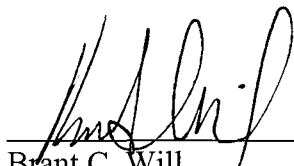
Section 14. The Council does hereby authorize the deposit and withdrawal of the proceeds of the sale of Additional Bonds and Additional Refunding Bonds, including such proceeds held by the Trustee, in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of section 16429.1 of the California Government Code for the purpose of investment as stated therein, and verification by the State Treasurer's Office of all banking information provided in that regard. Any of the Mayor, Chief Operating Officer, Chief Financial Officer, City Treasurer, City Comptroller, or the Trustee on behalf of the City are hereby authorized to order the deposit or withdrawal of the proceeds of the sale of Additional Bonds and Additional Refunding Bonds in the Local Agency Investment Fund.

Section 15. 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 16. 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

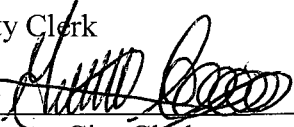
By

  
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Brant C. Will  
Deputy City Attorney

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I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 3/26/13.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 4/1/13  
(date)

  
BOB FILNER, Mayor

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

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BOB FILNER, Mayor