

# 335  
12/6/16

(O-2017-64)

ORDINANCE NUMBER O- 20775 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 16 2016

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE LEASE, A FACILITIES LEASE, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE CERTIFICATE AND AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AN INDENTURE BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, AND APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF THE AUTHORITY'S LEASE REVENUE BONDS (BALBOA PARK PARKING RELATED PUBLIC IMPROVEMENTS) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$50,000,000 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 to further public purposes and effect significant public benefits, as determined by the local agency; and

WHEREAS, the Public Facilities Financing Authority of the City of San Diego (the Authority) was established pursuant to the terms of a Joint Exercise of Powers Agreement dated May 14, 1991 which has been amended and restated pursuant to the terms of the Third Amended and Restated Joint Exercise of Powers Agreement, dated January 1, 2013, for the purpose, among others, of issuing its bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985

to be used to provide financial assistance to the City to finance and refinance public capital improvements; and

WHEREAS, the City previously adopted Resolution No. 307557 on July 12, 2012, declaring its intention to issue bonds to finance the Parking Facility (defined below) which remains in effect; and

WHEREAS, the City previously adopted Ordinance No. 20205 to authorize the issuance of bonds to finance the Parking Facility following which certain litigation was commenced regarding the Parking Facility; and

WHEREAS, the authority to issue bonds for the Parking Facility contained within Ordinance No. 20205 has now expired and the City desires to authorize the issuance of the Bonds (defined below) to finance the Project (defined below) as described herein; and

WHEREAS, a notice of a public hearing concerning the adoption of this Ordinance and the issuance of Bonds to finance the improvements described below was duly published once at least ten days prior to the adoption as required by City Charter section 99 and at least five days prior to such hearing in a newspaper of general circulation in the City as required by the Marks-Roos Local Bond Pooling Act of 1985; and

WHEREAS, the City has determined that: (i) the issuance of the Bonds 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 a portion of the costs of the acquisition, construction, installation and equipping of a parking facility, including a rooftop park thereon (the Parking Facility) together with a bypass bridge, a road to divert vehicular traffic away from the pedestrian core of Balboa Park, and certain capital improvements related to the Parking Facility and, in the event that the

Parking Facility is not constructed or proceeds remain after the completion of construction, the costs of other eligible General Fund capital improvements in the City's capital improvement program ( such capital improvements, together with the Parking Facility, are collectively referred to as the Project); and (iii) the Project will be located within the geographic boundaries of the City; and

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

WHEREAS, in order to finance the Project, capitalized interest and costs of issuance and to achieve such public purposes, and to have ready market access when funds are needed for the Project, the City has determined to request and approve the Authority's issuance of not to exceed \$50,000,000 aggregate principal amount of its Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds (Balboa Park Parking Related Public Improvements) (the Bonds) pursuant to the Marks-Roos Local Bond Pooling Act of 1985 and an Indenture (the Indenture), by and between the Authority and Wilmington Trust, National Association, as (Trustee); and

WHEREAS, in order to provide for the payment, equally and ratably, of the Bonds, the City will lease certain real property of the City on which the Parking Facility will be located (the Site) to the Authority pursuant to a Site Lease (the Site Lease) by and between the City and the Authority, and the Authority will lease the Site and the Parking Facility (together with the Site, the Leased Premises) to the City pursuant to a Facilities Lease (the Facilities Lease) by and between the Authority and the City, and any additional real property as may be added to the terms of the Site Lease and the Facilities Lease as described in Sections 3 and 4 hereof, under

which the City will agree to make base rental payments to the Authority (Base Rental Payments) which, together with capitalized interest on the Bonds, will be calculated to be sufficient to enable the Authority to pay the principal of and on the Bonds when due and payable; and

WHEREAS, given that the leasing of the Site and the Leased Premises is being approved by the adoption of this Ordinance, no further action is required under Section 22.091 of the San Diego Municipal Code with respect to the leasing thereof; and

WHEREAS, the City has determined that the Bonds be sold by a negotiated sale pursuant to the terms of a Bond Purchase Agreement (the Bond Purchase Agreement) among the City, the Authority and Loop Capital Markets LLC, as representative of any underwriter named therein; and

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

1. a proposed form of 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 00-20775-1, under which the City will lease the Site to the Authority;
2. a proposed form of Facilities Lease between the Authority and the City, a copy of which is on file in the office of the City Clerk as document number 00-20775-2, under which the Authority will lease the Leased Premises to the City;
3. a proposed form of Indenture between the Authority and the Trustee, a copy of which is on file in the office of the City Clerk as document number 00-20775-3, under which the Authority will issue the Bonds;
4. a proposed form of Bond Purchase Agreement regarding the Bonds among the City, the Authority and Loop Capital Markets LLC, as representative of any underwriter

named therein, a copy of which is on file in the office of City Clerk as Document  
No. 00-20775-4, under which the 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 number 00-20775-5 (the  
documents described in paragraphs 1 through 5 are collectively referred to as the Financing  
Documents); 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, 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 Project will provide  
significant public benefits in accordance with the criteria specified in Section 6586 of the  
Government Code.

Section 3. The form and content of the Site Lease, pursuant to which the City leases the  
Site to the Authority, is hereby authorized and approved. Each of the Mayor, the Chief Operating  
Officer or the Chief Financial Officer, 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 substantially in 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 and amendments thereto  
(including, without limitation, revising the description of the Site to add or remove property  
therefrom) as any Authorized Signatory, in consultation with 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 thereof. Given the scope of the Project to be financed, it may be necessary to add real property to the Site to ensure that there is adequate fair rental value in the Leased Premises under the Facilities Lease to produce rental payments thereunder sufficient to repay the Bonds, and any Authorized Signatory, in consultation with the City Attorney, may identify other property of the City to be included as a part of the Site to fulfill such purpose or to identify different real property in place of the Site included in the Site Lease presented to this meeting in the event it is determined by an Authorized Signatory that such substitution of real property is in the best interest of the City, such determination to be conclusively evidenced by such Authorized Signatory's execution and delivery of the Site Lease.

Section 4. The form and content of the Facilities Lease, pursuant to which the Authority leases to the City the Leased Premises and the City agrees to pay Base Rental Payments and other payments, 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 Facilities Lease substantially in 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 and amendments thereto (including, without limitation, revising the description of the Leased Premises to add or remove property therefrom) as any Authorized Signatory, in consultation with 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 thereof. Given the scope of the Project to be financed, it may be necessary to add real property to the Leased Premises to ensure that there is adequate fair rental value in the Leased Premises under the Facilities Lease to produce rental

payments thereunder sufficient to repay the Bonds, and any Authorized Signatory, in consultation with the City Attorney, may identify other property of the City to be included as a part of the Leased Premises to fulfill such purpose or to identify different real property in place of the Leased Premises included in the Facilities Lease presented to this meeting in the event it is determined by an Authorized Signatory that such substitution of real property is in the best interest of the City, such determination to be conclusively evidenced by such Authorized Signatory's execution and delivery of the Facilities Lease.

Section 5. The form and content of the Indenture, pursuant to which the Authority will issue the Bonds, is 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 Indenture in the form in which it is executed.

Section 6. The City hereby authorizes and approves, and requests the Authority to approve and authorize, the issuance and sale by the Authority of the Bonds in a total aggregate principal amount not to exceed \$50,000,000 by negotiated sale, provided that: (i) the sale and issuance of the Bonds is determined by the Chief Operating Officer or the Chief Financial Officer to be consistent with the City's Debt Policy, and (ii) there has first been presented to the Disclosure Practices Working Group and this Council for approval a form of preliminary official statement. Each of the Mayor, the Chief Operating Officer and the Chief Financial Officer, in consultation with the City's Financial Advisor for the Bonds, is hereby authorized to approve the pricing, timing and other features of the Bonds.

Section 7. The form and content of the Bond 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 Bond Purchase Agreement in connection with the purchase and sale of the Bonds, substantially in the form presented to and considered at this meeting, with such changes and additions therein, including without limitation naming the

underwriter or underwriters for the 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 such Authorized Signatory's execution and delivery thereof.

Section 8. The anticipated source of revenue for payment of the Bonds hereby authorized is the Base Rental Payments to be made by the City under and as defined in the Facilities Lease.

Section 9. The form and content of the Continuing Disclosure Certificate 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 Continuing Disclosure Certificate in connection with the purchase and sale of the 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 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 such Authorized Signatory's execution and delivery thereof.

Section 10. Authorized officers of the City are hereby authorized and directed to pay all the fees and other costs of issuance of the Bonds in accordance with the Bond Purchase Agreement 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 11. All actions heretofore taken by any officers, employees or agents of the City with respect to the issuance, delivery or sale of the 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 Project, 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



Operating Officer or the Chief Financial Officer, 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, from time to time, consistent with this Ordinance and the Financing Documents and other documents authorized by this Ordinance including, without limitation, the addition or removal of real property from the Site and the Leased Premises as described in Sections 3 and 4 above, payment of necessary and appropriate fees and expenses of bond counsel, disclosure counsel, financial advisor and other professionals retained by the City; and (b) 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 Bond Purchase Agreement 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 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 Operating Officer and the Chief Financial Officer is hereby authorized to approve additions, changes, amendments and supplements to the Financing Documents and the other documents authorized by this Ordinance; which additions and changes the Mayor, the Chief Operating Officer or the Chief Financial Officer shall believe, with the advice of the City's Financial Advisor for the Bonds, to be necessary or desirable and 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 6 or 7 hereof.

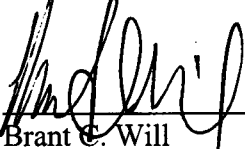
Section 12. Authorized Officers of the City are hereby authorized to enter into contract amendments with Stradling Yocca Carlson & Rauth, a Professional Corporation for its services as bond and disclosure counsel for the Bonds and with Fieldman Rolapp & Associates, for its services as financial advisor to the City with respect to the Bonds.

Section 13. The Chief Financial Officer of the City is hereby authorized to establish (a) one or more interest bearing accounts into which proceeds of the Bonds will be deposited, and (b) one or more funds into which parking revenues related to the Parking Facility will be deposited, and from which operation and maintenance costs related to the Parking Facility will be paid, debt service on the Bonds will be paid, and safety and capital reserves for the Parking Facility will be maintained at target levels.

Section 14. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the City Council and the public prior to day of its passage.

Section 15. 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  
10/18/16  
Or.Dept: Debt Mgmt.  
Doc. No.: 1375880

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of DEC 06 2016.

ELIZABETH S. MALAND  
City Clerk

By 

Deputy City Clerk

Approved: \_\_\_\_\_

12/14/16

(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_

(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on DEC 06 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District 3 (Vacant)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 16 2016

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

NOV 14 2016, and on DEC 16 2016

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By [Signature], Deputy

<p>Office of the City Clerk, San Diego, California</p> <p>Ordinance Number O- <u>20775</u></p>
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