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7/13/2021

(R-2021-537)

RESOLUTION NUMBER R- 313650

DATE OF FINAL PASSAGE JUL 20 2021

RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO ACTING AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 2 (SANTALUZ) AUTHORIZING THE ISSUANCE OF ITS IMPROVEMENT AREA NO. 1 SPECIAL TAX REFUNDING BONDS SERIES 2021 IN A PRINCIPAL AMOUNT NOT TO EXCEED TWENTY-SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$27,500,000); AUTHORIZING THE RETENTION OF NORTON ROSE FULBRIGHT US LLP AS BOND AND DISCLOSURE COUNSEL IN CONNECTION THEREWITH; APPROVING WAIVER OF POTENTIAL CONFLICT OF INTEREST REQUESTED BY NORTON ROSE FULBRIGHT US LLP RELATING TO ITS REPRESENTATION OF PURDUE PHARMA; AND APPROVING THE FORM, EXECUTION AND DELIVERY OF THE BOND PURCHASE AGREEMENT, THE INDENTURE, THE CONTINUING DISCLOSURE CERTIFICATE AND THE PRELIMINARY OFFICIAL STATEMENT AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City Council of the City of San Diego, located in San Diego County, California (Council), has heretofore undertaken proceedings and declared the necessity of the Community Facilities District No. 2 (Santaluz) (District) to issue bonds pursuant to the terms and provisions of the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California (Act) to finance the acquisition and construction of various public facilities; and

WHEREAS, pursuant to the Act the District has previously issued its \$56,020,000 Improvement Area No. 1 Special Tax Bonds Series A of 2000 (2000 Bonds), and its \$5,000,000 Improvement Area No. 1 Special Tax Bonds Series A of 2004 (2004 Bonds), to finance the costs of certain public improvements within the District; and

WHEREAS, pursuant to the Act the District has previously issued its \$51,680,000 Improvement Area No. 1 Special Tax Refunding Bonds Series A of 2011 (2011 Bonds), to refund the 2000 Bonds and the 2004 Bonds, of which \$30,480,000 is currently outstanding; and

WHEREAS, in order to benefit taxpayers within Improvement Area No. 1 of the District by lowering the annual special taxes to be levied for debt service, the District now desires to defease all of the outstanding 2011 Bonds through the issuance of its Improvement Area No. 1 Special Tax Refunding Bonds Series 2021 (Refunding Bonds) in an aggregate principal amount not to exceed \$27,500,000 and the application of certain existing District funds to such defeasance; and

WHEREAS, the Refunding Bonds shall be issued in accordance with the Bond Indenture dated as of August 1, 2021 (Indenture) by and between the District and U.S. Bank National Association, as trustee (Trustee); and

WHEREAS, in order to effectuate the issuance of the Refunding Bonds, the Council, acting in its capacity as the legislative body of the District, desires to approve the form of the Preliminary Official Statement for the Refunding Bonds (Preliminary Official Statement), which the underwriters of the Refunding Bonds, Piper Sandler & Co., as senior manager, and Raymond James & Associates, Inc. as co-manager (collectively, Underwriters), will use to market the Refunding Bonds and to approve the forms and authorize the execution and delivery of the Indenture, a Bond Purchase Agreement and a Continuing Disclosure Certificate, in substantially the forms on file with the City Clerk as Document Numbers R-313650⁻¹ R-313650⁻² and R-313650⁻³ respectively, and to authorize such changes and additions thereto as the Authorized Officers (defined herein) deem necessary or desirable; and

WHEREAS, the Council, acting in its capacity as the legislative body of the District, has determined in accordance with Government Code section 53360.4 that a negotiated sale of the Refunding Bonds to the Underwriter in accordance with the terms of the Bond Purchase Agreement to be entered into by the District and the Underwriter (Bond Purchase Agreement) will result in a lower overall cost to the District than a sale of the Refunding Bonds on sealed proposals to the highest bidder as described in Government Code section 53360 in that a negotiated sale will allow for adequate time to pre-market the Refunding Bonds and for the timing of the sale of the Refunding Bonds to be flexible, thereby maximizing the estimated debt service savings to Improvement Area No. 1 of the District; and

WHEREAS, the Council, acting in its capacity as the legislative body of the District, has determined that it is prudent in the management of the District's fiscal affairs to issue the Refunding Bonds; and

WHEREAS, the aggregate assessed value of the real property in Improvement Area No. 1 of the District subject to the special taxes used to pay debt service on the Refunding Bonds based on the full cash value of the property within Improvement Area No. 1 of the District as shown on the most recent *ad valorem* assessment roll for property within Improvement Area No. 1 of the District having a lien date as of January 1, 2020 and provided by the County of San Diego is more than three (3) times the principal amount of the Refunding Bonds and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act or a special assessment levied on property within Improvement Area No. 1 of the District, which assessed value exceeds the minimum value required by the Act for the issuance of the Refunding Bonds; and

WHEREAS, the Council, acting in its capacity as the legislative body of the District, finds that the issuance of the Refunding Bonds will achieve debt service savings and will benefit taxpayers within Improvement Area No. 1 of the District; and

WHEREAS, the District is required by the bond markets to retain bond and disclosure counsel to issue the Refunding Bonds, and Norton Rose Fulbright US LLP (NRF) was selected pursuant to a Request for Proposal process by the City Attorney's Office as bond and disclosure counsel; the legal fees and costs of NRF shall be in an amount not-to-exceed \$59,500; and

WHEREAS, NRF and its attorneys represent, and for many years have represented, members of the Sackler family and their estates, families, families' trustees, and their interests (collectively, Sackler Interests), including without limitation pharmaceutical companies such as Purdue Pharma among others, in numerous and varied ongoing matters, including relating to opioid products of these pharmaceutical companies; and

WHEREAS, certain of NRF's non-public finance attorneys are involved in various ways with the currently-pending Purdue Pharma bankruptcy case in New York, *In re: Purdue Pharma L.P. et al.*, No. 19-23649 (Bank. S.D.N.Y.). Additionally, the City has filed an opioid lawsuit against Purdue Pharma, certain members of the Sackler family and others, *The City of San Diego et al. v. Purdue Pharma L.P., et al.*, Civil Action No. 3:19-cv-00420-L-BGS (S.D. Calif.), which claim is now subsumed into the Purdue Pharma bankruptcy proceedings, thus making the City adverse to the Sackler Interests (the two actions together, collectively the Purdue Pharma Litigation Matters); and

WHEREAS, NRF now seeks a conflict-of-interest waiver from the City so it may be retained as bond and disclosure counsel for the Refunding Bonds, while continuing to represent Purdue Pharma in the Purdue Pharma Litigation Matters; and

WHEREAS, under the California Rules of Professional Conduct, Rule 1.7, an attorney shall not, without the informed written consent of each client, represent a client if the representation is directly adverse to another client in the same or separate matter; and

WHEREAS, NRF's representation of Purdue Pharma in the Purdue Pharma Litigation Matters is completely unrelated to the legal services to be performed under the bond and disclosure counsel legal services contract; and

WHEREAS, granting NRF's request for a conflict-of-interest waiver complies with Council Policy 000-34 because it does not pose a detrimental risk to the City as NRF attorneys working on the Refunding Bonds have obtained no confidential City information related to the Purdue Pharma Litigation Matters and NRF will implement appropriate screening measures to protect against the sharing of confidential City information within NRF; and

WHEREAS, pursuant to the San Diego Municipal Code section 22.4108 (as amended and enacted by Ordinance O-19320), the Disclosure Practices Working Group (DPWG) is required to review disclosure documents of the City and related entities, and the District is a related entity which involves different certification procedures under the Disclosure Controls and Procedures of the City (Disclosure Controls), and DPWG has reviewed and approved, in accordance with the Disclosure Controls, the form of the Preliminary Official Statement; and

WHEREAS, the Council, acting as the legislative body of the District, is authorized to undertake all of the actions described in this Resolution pursuant to the Act, the California Constitution, and other applicable laws of the State of California; NOW, THEREFORE,

BE IT RESOLVED, the Council of the City of San Diego, acting as the legislative body of Community Facilities District No. 2 (Santaluz), determines as follows:

SECTION 1. Each of the above recitals is true and correct and is adopted by the Council, acting in its capacity as the legislative body of the District.

SECTION 2. The Council, acting in its capacity as the legislative body of the District, finds that the issuance of the Refunding Bonds as described in the Preliminary Official Statement will provide significant public benefits by reducing the total amount of special taxes to be levied for debt service within Improvement Area No. 1 of the District.

SECTION 3. The Council, acting in its capacity as the legislative body of the District, has determined to defease the 2011 Bonds, subject to the provisions of Section 5 below regarding debt service savings, through the issuance of its Refunding Bonds pursuant to the Indenture and a Bond Purchase Agreement and the application of certain existing District funds to such defeasance.

SECTION 4. The District is authorized pursuant to Section 53362 *et seq.* of the Act to issue the Refunding Bonds for the purpose of refunding the 2011 Bonds.

SECTION 5. The issuance of the Refunding Bonds in a principal amount not to exceed \$27,500,000 is hereby authorized, with the exact principal amount to be determined by the official signing the Bond Purchase Agreement in accordance with Section 8 below. The Refunding Bonds may be issued to refund the 2011 Bonds only if the Mayor, Council President, the Chief Operating Officer or the Chief Financial Officer, or the written designee of one of the foregoing (each an Authorized Officer and, together, the Authorized Officers), determines that there is an economic benefit to the District in the form of aggregate net present value savings of at least 3% in the case of a current refunding and 4% in the case of an advance refunding, expressed as a percentage of the par amount of the 2011 Bonds to be refunded by the Refunding Bonds. Each of the foregoing determinations to be made by an Authorized Officer will be

conclusively evidenced by the execution of the Bond Purchase Agreement by the District and the Underwriter.

The Council, acting in its capacity as the legislative body of the District, hereby determines that it is prudent in the management of the District's fiscal affairs to issue the Refunding Bonds subject to the conditions in this Resolution. The Refunding Bonds shall mature on the dates and pay interest at the rates set forth in the Bond Purchase Agreement. The Refunding Bonds shall be governed by the terms and conditions of the Indenture. The form of the Indenture presented at this meeting is hereby approved. The Indenture shall be executed by any one of the Authorized Officers substantially in the form of the Indenture presented at this meeting, with such additions thereto and changes therein as the officer or officers executing same deem necessary or desirable, including to insert the offering price(s), interest rate(s), selling compensation, principal amount per maturity, redemption dates and prices, reserve account deposits and such other related terms and provisions as limited by Section 8 hereof, or to conform any provisions therein to the Bond Purchase Agreement and the Official Statement delivered to the purchasers of the Refunding Bonds. Approval of such changes shall be conclusively evidenced by the execution and delivery of the Indenture by any one of the Authorized Officers. Capitalized terms used in this Resolution which are not defined herein have the meanings ascribed to them in the Indenture.

In satisfaction of the requirements contained in Section 53363.2 of the Act, the Council, acting in its capacity as the legislative body of the District, hereby determines that: (1) it is anticipated that the Refunding Bonds will be issued prior to August 21, 2021, with the 2011 Bonds maturing on and after September 1, 2022 being redeemed on September 1, 2021, (2) the Refunding Bonds shall be dated their date of issuance, be in the denominations, have the

maturity dates (which do not exceed the latest maturity date of the 2011 Bonds being refunded), and be payable at the place and be in the form specified in the Indenture, (3) the Refunding Bonds will bear interest at the minimum rate of 0.25% per annum, and (4) the designated cost of issuing the Refunding Bonds, as defined by section 53363.8 of the Act, shall include all of the costs specified in section 53363.8(a), (b)(2) and (c).

In satisfaction of the requirements contained in section 53364.2 of the Act, the Council, acting in its capacity as the legislative body of the District, hereby determines that any savings achieved through the issuance of the Refunding Bonds shall be used to reduce the special taxes of Improvement Area No. 1 of the District levied for debt service, and such reductions shall be made in accordance with the Act.

SECTION 6. The Refunding Bonds shall be executed on behalf of the District by the manual or facsimile signature of the President of the legislative body of the District and shall be attested to with the manual or facsimile signature of the City Clerk or Deputy City Clerk.

SECTION 7. The covenants set forth in the Indenture are hereby approved, and such covenants shall be deemed to be covenants of the legislative body of the District, and shall be complied with by the District and its officers. The Council, acting as the legislative body of the District, hereby makes and adopts the findings and determinations in Section 5.2(g) of the Indenture regarding the reduction of the maximum special tax rates.

SECTION 8. The Underwriters are hereby appointed for purposes of offering the Refunding Bonds for sale in accordance with the provisions of the Bond Purchase Agreement and the Indenture. The form of the Bond Purchase Agreement presented at this meeting is hereby approved, and any one of the Authorized Officers is hereby authorized to execute the Bond Purchase Agreement substantially in the form presented at this meeting, with such additions

thereto and changes therein as the officer or officers executing same deem necessary or desirable, including to conform the Bond Purchase Agreement to the dates, amounts and interest rates applicable to the Refunding Bonds; provided that, the Bond Purchase Agreement shall provide for a true interest cost (including original issue discount shown) not greater than 3.0%, and an underwriters' discount not greater than 0.45% of the principal amount of Bonds.

Approval of such additions and changes shall be conclusively evidenced by the execution and delivery of the Bond Purchase Agreement; provided, however, that the Bond Purchase Agreement shall be signed only if the requirements of Section 5 hereof have been satisfied.

SECTION 9. The form of the Continuing Disclosure Certificate presented at this meeting is hereby approved, and any one of the Authorized Officers is hereby authorized and directed to execute the Continuing Disclosure Certificate substantially in the form hereby approved, with such additions therein and changes thereto as the Authorized Officer or Authorized Officers executing same deem necessary or desirable, with such approval to be conclusively evidenced by the execution and delivery of the Continuing Disclosure Certificate.

SECTION 10. The form and content of the Preliminary Official Statement substantially in the form presented to and considered at this meeting is hereby approved, with such additions thereto and changes therein as are determined to be necessary or desirable by any one of the Authorized Officers, including, but not limited to, such additions and changes as are necessary to make all information set forth therein accurate and not misleading, such approval to be conclusively evidenced by the delivery of the Preliminary Official Statement to the Underwriter. The Authorized Officers are, and each of them acting alone is, hereby authorized to certify to the Underwriters on behalf of the District that the Preliminary Official Statement is deemed final as of its date, within the meaning of Rule 15c2-12 of the Securities and Exchange Commission

(except for the omission of certain information as permitted therein). The distribution by the Underwriters of the Preliminary Official Statement and the Official Statement to persons who may be interested in the purchase of the Refunding Bonds is hereby authorized and approved. Any of the Authorized Officers is hereby authorized and directed to deliver to the Underwriters a final Official Statement in the form of the Preliminary Official Statement, together with such changes as are determined necessary or desirable by the Authorized Officer executing the Official Statement, and in accordance with any recommendation by DPWG, to make such Official Statement complete and accurate as of its date, such approval to be conclusively evidenced by the delivery of the Official Statement to the Underwriters.

SECTION 11. In accordance with the requirements of section 53345.8 of the Act and the policies of the City, the Council, acting in its capacity as the legislative body of the District, hereby determines that the value of the real property in Improvement Area No. 1 of the District subject to the special tax to pay debt service on the Refunding Bonds is at least three (3) times the sum of the principal amount of the Refunding Bonds plus the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act or a special assessment levied on property within Improvement Area No. 1 of the District. This determination is based exclusively on the full cash value of property within Improvement Area No. 1 of the District as shown on the *ad valorem* assessment roll for property within Improvement Area No. 1 of the District provided by the County of San Diego and having a lien date as of January 1, 2020.

SECTION 12. The City Attorney or her specified designee is authorized to retain NRF as bond counsel and disclosure counsel to the City in connection with the issuance of the Refunding Bonds under such contracts or arrangements as the City Attorney or her 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 \$59,500 for the issuance of the Refunding Bonds.

SECTION 13. The Council, acting in its capacity as the legislative body of the District, approves the waiver of potential conflicts of interest requested by NRF and consents to NRF's continued representation of Purdue Pharma in the Purdue Pharma Litigation Matters while providing the City legal services as bond and disclosure counsel in connection with the Refunding Bonds.

SECTION 14. Each of the Authorized Officers is authorized to provide for all services necessary to effectuate the issuance, sale and delivery of the Refunding Bonds. Such services shall include, but not be limited to, obtaining legal services, trustee services, verification agent services, consultant services and any other services deemed appropriate by an Authorized Officer. Any one of the Authorized Officers is authorized to pay for the cost of such services, together with other Costs of Issuance (as defined in the Indenture and as otherwise agreed to in writing by an Authorized Officer) from the sale and delivery of Refunding Bond proceeds. The Authorized Officers are hereby authorized and directed to pay all the fees and other costs of issuance of the Refunding Bonds in accordance with the Bond Purchase Agreement and as otherwise agreed to by the District and the respective parties thereto, including the fees and expenses of bond counsel and disclosure counsel, the municipal advisor and special tax consultant, applicable CDIAC fees, verification agent fees and printer fees.

SECTION 15. All actions heretofore taken by any Authorized Officers, or by any officers, employees or agents of the City, with respect to: (1) the issuance, delivery or sale of the Refunding Bonds; (2) the refunding, defeasance and redemption of the 2011 Bonds; and (3) the Bond Purchase Agreement, Indenture, Continuing Disclosure Certificate, Preliminary Official

Passed by the Council of The City of San Diego on JUL 13 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<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"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 20 2021.

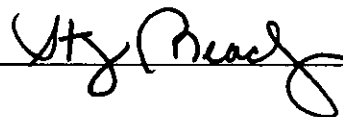
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

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

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 313650