

RESOLUTION NO. 21-0104

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH APPROVING A TRUST AGREEMENT, A SITE LEASE, A LEASE AGREEMENT, A CERTIFICATE PURCHASE CONTRACT, AN OFFICIAL STATEMENT, A CONTINUING DISCLOSURE CERTIFICATE, AN ESCROW AGREEMENT; AND AUTHORIZING THE TAKING OF CERTAIN ACTIONS IN CONNECTION WITH THE REFUNDING OF OUTSTANDING CERTIFICATES OF PARTICIPATION AND THE EXECUTION AND DELIVERY OF NOT TO EXCEED \$8,000,000 REFUNDING CERTIFICATES OF PARTICIPATION SERIES 2021

WHEREAS:

(a) The Manhattan Beach Capital Improvements Corporation, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation") and the City of Manhattan Beach, a political subdivision duly organized and existing under and pursuant to the Constitution and laws of the State of California (the "City") previously entered into a Lease Agreement (the "2012 Project Lease"), dated as of July 1, 2012, in connection with the execution and delivery of City of Manhattan Beach Certificates of Participation (Metlox and Water/Wastewater Refunding) Series 2012 (the "2012 Certificates"), for the purpose of refinancing the costs of certain capital projects for the City described therein, generally consisting of a parking garage and improvements to the City wastewater and water facilities (the "Improvements"); and

(b) The City has determined that refinancing the costs of the Improvements by paying and refunding the base rental payments becoming due under the 2012 Project Lease is necessary and proper for City purposes and uses under the terms of applicable law and is for the common benefit of the City as a whole; and

(c) In order to implement the foregoing, the City and the Corporation, propose to enter into a Site Lease (as hereinafter defined) pursuant to which the City agrees to lease to the Corporation certain real property and improvements consisting of City Hall and the real property on which it is located (the "Leased Premises"); and

(d) The City and the Corporation propose to enter into the Lease Agreement (the "Lease Agreement") pursuant to which the Corporation agrees to lease the Leased Premises to the City in consideration for which the City will make payments of base rental ("Base Rental") for the use and possession of the Leased Premises; and

(e) The Corporation proposes to assign and transfer to U.S. Bank National Association, as trustee (the "Trustee"), certain of its rights, title and interest in and to the Lease Agreement, including its right to receive payments of Base Rental thereunder, by entering into an Assignment Agreement (as hereinafter defined); and

(f) The City, the Corporation and the Trustee propose to enter into a Trust Agreement (as hereinafter defined) pursuant to which the Trustee will execute and deliver

certificates of participation representing proportionate undivided interests in the Lease Agreement, including the right to receive payments of Base Rental thereunder; and

(g) The City proposes to enter into a Continuing Disclosure Certificate (as hereinafter defined) in order to assist the participating underwriter in complying with the Rule (as defined therein); and

(h) The City, the Corporation and the Underwriter (as defined herein) propose to enter into a Certificate Purchase Agreement (as hereinafter defined) pursuant to which the City will sell the 2021 Certificates (as hereinafter defined); and

(i) In order to provide for the defeasance and redemption of the 2012 Certificate, the City proposes to enter into an Escrow Agreement (as hereinafter defined) relating to the 2012 Certificates;

(j) In compliance with SB 450, the City has obtained from its Municipal Advisor the required good faith estimates and such estimates are disclosed and set forth in an attachment to the staff report submitted herewith; and

(j) The City is authorized to undertake all of the above pursuant to applicable laws of the State of California.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

1. The Council hereby determines the above findings are true and correct.
2. The form of Site Lease by and between the City and the Corporation (the "Site Lease"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved. The term of the Site Lease shall not exceed 16 years.
3. The form of Lease Agreement by and between the City and the Corporation, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, is hereby approved. The term of the Lease Agreement shall not exceed 16 years. Base Rental Payments shall not exceed \$940,000 in any year.

Amounts payable by the City pursuant to the Lease Agreement shall be payable from any legally available funds of the City to the extent set forth in the Lease Agreement; provided, however, that upon the sale of the 2021 Certificates (defined below), the Director of Finance shall calculate the portion of Base Rental Payments due under the Lease Agreement attributable to the prepayment of the portion of the 2012 Certificates that refinanced improvements to the City's water and wastewater systems, and shall prepare a schedule setting forth such amounts. Such amounts shall be charged against and payable from the revenues of the water and wastewater systems.

4. The form of Trust Agreement among the City, the Corporation and the Trustee (the "Trust Agreement"), a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference, is hereby approved.

5. The execution and delivery, pursuant to the Trust Agreement, of the Refunding Certificates of Participation Series 2021 (the "2021 Certificates") in an aggregate principal amount not to exceed \$8,000,000 is hereby approved.

6. The form of Certificate Purchase Agreement (the "Purchase Agreement") between the City and BofA Securities, Inc. (the "Underwriter"), a copy of which is attached hereto as Exhibit "D" and incorporated herein by this reference, is hereby approved. In connection with the execution and delivery of the Purchase Agreement, any Responsible Officer (defined below) is further authorized and directed to negotiate the price and the interest rates for the 2021 Certificates to be sold pursuant to the Purchase Agreement. The true interest cost of payments to be made in connection with the 2021 Certificates shall not exceed 1.75 percent per annum and the underwriter's discount from the principal amount of the 2021 Certificates shall not exceed 0.80% of the aggregate amount thereof.

7. Any one of the Mayor (or in the absence of the Mayor, the Mayor Pro Tem), the City Manager, or any deputy thereof, or person duly appointed in writing to act in the stead of such officer (collectively, the "Responsible Officers"), is hereby authorized and directed for and in the name of and on behalf of the City to execute and deliver the Site Lease, the Lease Agreement, the Trust Agreement, the Certificate Purchase Agreement, the Continuing Disclosure Certificate and the Escrow Agreement, each in substantially the form presented to and considered at this meeting, with such changes therein, deletions therefrom and additions thereto as may be approved (i) by any Responsible Officer, in such person's discretion, as being in the best interests of the City, (ii) by Stradling Yocca Carlson & Rauth, Special Counsel, and, (iii) as to form, by City Attorney; such approval to be conclusively evidenced by the execution and delivery thereof by the person executing the same on behalf of the City.

8. The City hereby consents to the assignment by the Corporation of certain of its rights under the Lease Agreement, including the right to receive payments of Base Rental thereunder, to the Trustee for the benefit of the owners of the 2021 Certificates and hereby approves the form of the Assignment Agreement by and between the Corporation and the Trustee (the "Assignment Agreement"), a copy of which is attached hereto as Exhibit "E" and incorporated herein by this reference.

9. The proposed form of preliminary official statement relating to the 2021 Certificates, presented to this meeting and a copy of which is attached hereto as Exhibit "F", is hereby approved. The Underwriter of the 2021 Certificates and the Responsible Officers are hereby authorized to distribute to persons who may be interested in the purchase of the 2021 Certificates a preliminary official statement in substantially said form with such changes therein, deletions therefrom and additions thereto as may be approved (i) by any Responsible Officer, (ii) by Stradling Yocca Carlson & Rauth, a Professional Corporation, Special Counsel, (iii) as to form, by the City Attorney. Upon approval of such changes by any Responsible Officer as evidenced by execution of a certificate,

substantially in the form on file with the City Clerk and incorporated herein by this reference, the preliminary official statement shall be deemed final as of its date except for the omission of certain information as provided in and pursuant to Rule 15c2-12 promulgated under the Securities and Exchange Act of 1934, as amended. Any Responsible Officer is, hereby authorized, for and in the name of and on behalf of the City, to execute a final official statement for the 2021 Certificates authorized hereby, in substantially the form of said preliminary official statement, with such insertions and changes therein as such officer or officers, with the advice of said Special Counsel and the City Attorney, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof. The underwriter or underwriters of the 2021 Certificates and the Responsible Officers of the City are hereby authorized and directed to deliver copies of the final official statement to all actual purchasers of the 2021 Certificates.

10. The form of Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"), in substantially the form of the draft attached hereto as Exhibit "G" and incorporated herein by reference, to be dated the date of initial delivery of the 2021 Certificates, is hereby authorized to be executed and delivered by any Responsible Officer. The City covenants with the holders from time to time of the 2021 Certificates that it will, and hereby authorizes the appropriate officers and employees of the City to take all action necessary or appropriate to, comply with and carry out all of the provisions of the Continuing Disclosure Certificate as amended from time to time. Notwithstanding any other provision of this Resolution, failure of the City to perform in accordance with the Continuing Disclosure Certificate shall not constitute a default or an Event of Default under the Resolution or the Trust Agreement, and the rights and remedies provided by the Resolution and the Trust Agreement upon the occurrence of such a default or an Event of Default shall not apply to any such failure, but the Continuing Disclosure Certificate may be enforced only as provided therein.

11. The form of the Escrow Agreement (the "Escrow Agreement") a copy of which is attached hereto as Exhibit "H and incorporated herein by this reference, is hereby approved.

12. All actions heretofore taken by any officer of the City with respect to the issuance and sale of the 2021 Certificates, are hereby approved, confirmed and ratified.

13. The Responsible Officers are, and each of them acting alone is, hereby authorized and directed to take such actions and to execute such documents and certificates as may be necessary to effectuate the purposes of this resolution, including the execution and delivery of the 2021 Certificates, the paying and refunding of the base rental payments becoming due under the 2012 Project Lease and other agreements relating to the 2012 Certificates, and the publication of any notices necessary or desirable in connection with the sale of the 2021 Certificates and execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, deem necessary or advisable in order to consummate the transactions as described herein and in the Official Statement.

14. This Resolution shall take effect upon its adoption by this Council. The City Clerk shall certify to the adoption of this Resolution and thenceforth and thereafter the same shall be in full force and effect.

ADOPTED on November 16, 2021.

AYES:

NOES:

ABSENT:

ABSTAIN:

HILDY STERN
Mayor

ATTEST:

LIZA TAMURA
City Clerk

EXHIBIT A
FORM OF SITE LEASE

EXHIBIT B
FORM OF LEASE AGREEMENT

EXHIBIT C
FORM OF TRUST AGREEMENT

EXHIBIT D

FORM OF CERTIFICATE PURCHASE AGREEMENT

EXHIBIT E

FORM OF ASSIGNMENT AGREEMENT

EXHIBIT F

FORM OF OFFICIAL STATEMENT

EXHIBIT G

FORM OF CONTINUING DISCLOSURE CERTIFICATE

EXHIBIT H

FORM OF ESCROW AGREEMENT