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PRESS RELEASE -- FOR IMMEDIATE RELEASE

San Diegans for Open Government sues City of San Diego to block Balboa Park bonds issued without voter approval.

Today San Diegans for Open Government, a non-profit government watch-dog organization, filed a lawsuit to challenge the legality of \$17.4 million in bonds issued by the City of San Diego to raise money to pay for a new parking structure in Balboa Park's Plaza de Panama.

The lawsuit alleges, among other things, that the city did not have the legal authority to issue the bonds without voter approval, which is required by the San Diego City Charter whenever the city borrows money that cannot be repaid in the same fiscal year. The city pledged two fire stations and a police facility as collateral for repayment of the bonds by leasing those facilities to a city-controlled corporation and then allowing the corporation to give the bondholders a security interest in the facilities. The mayor and city council approved the proposal even though the city's independent budget analyst concluded that the parking structure might not pay for itself and the bonds would have to be repaid out of the city's general fund.

"San Diego voters wanted to make sure they would have a chance to veto any borrowing scheme the politicians concocted if the money could not be repaid within the same fiscal year," said SDOG chairman Ian Trowbridge. "If the politicians cannot live within the city's means, the voters must approve the politicians' decision to charge their spending spree to the taxpayers' credit card."

SDOG attorney Cory Briggs noted: "The politicians have created a series of Enron-like transactions in which the city leased its own public-safety facilities to a corporation the politicians created and the corporation leased the facilities back to the city--except now, instead of being owned free and clear by the public, the facilities are burdened with a multi-million-dollar lien and could be lost to Wall Street if the politicians' gamble doesn't pay off. The City Charter prohibits scams like this unless the voters consent."

The lawsuit is unlikely to go to trial until the end of 2013. A copy of the lawsuit follows this press release. For more information about the letter, please contact Cory Briggs at 909-949-7115.



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5 for Open Government

F I L E D
Clerk of the Superior Court
NOV 30 2012
By **L McALISTER**, Deputy

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 SAN DIEGO COUNTY--HALL OF JUSTICE
9

10 SAN DIEGANS FOR OPEN GOVERNMENT,)

11 Plaintiff,)

12 vs.)

13 CITY OF SAN DIEGO; PUBLIC FACILITIES)
FINANCING AUTHORITY OF THE CITY OF)
14 SAN DIEGO; and ALL PERSONS INTERESTED)
IN THE MATTER OF THE APPROVAL AND)
15 ISSUANCE OF THE PUBLIC FACILITIES)
FINANCING AUTHORITY OF THE CITY OF)
16 SAN DIEGO SPRECKELS ORGAN PAVILION)
PUBLIC PARKING GARAGE LEASE REVENUE)
17 BONDS, SERIES 2012C, THE RELATED)
FACILITIES LEASE DATED NOVEMBER 1,)
18 2012, BY AND BETWEEN THE PUBLIC)
FACILITIES FINANCING AUTHORITY OF THE)
19 CITY OF SAN DIEGO AND THE CITY OF SAN)
DIEGO, THE RELATED SITE LEASE DATED)
20 NOVEMBER 1, 2012, BY AND BETWEEN THE)
CITY OF SAN DIEGO AND THE PUBLIC)
21 FACILITIES FINANCING AUTHORITY OF THE)
CITY OF SAN DIEGO, THE RELATED BOND)
22 PURCHASE AGREEMENT BY AND AMONG)
THE PUBLIC FACILITIES FINANCING)
23 AUTHORITY OF THE CITY OF SAN DIEGO,)
THE CITY OF SAN DIEGO, AND LOOP)
24 CAPITAL MARKETS, LLC, AND THE)
RELATED INDENTURE BY AND BETWEEN)
25 THE PUBLIC FACILITIES FINANCING)
AUTHORITY OF THE CITY OF SAN DIEGO)
26 AND WILMINGTON TRUST, NATIONAL)
ASSOCIATION,)

27 Defendants.
28

CASE NO. 37-2012-00086572-CU-MC-CTL

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiff SAN DIEGANS FOR OPEN GOVERNMENT alleges as follows in this Complaint
2 for Declaratory and Injunctive Relief:

3 **Parties**

4 1. Plaintiff is a non-profit taxpayer and voter organization formed and operating under the
5 laws of the State of California. At least one of Plaintiff's members resides in the City of San Diego,
6 California, and Plaintiff has an interest in ensuring open, accountable, responsive government, and the
7 protection of its members' rights as taxpayers and voters.

8 2. Defendant CITY OF SAN DIEGO ("CITY") is a charter city under the laws of the State
9 of California, is the successor agency to the Redevelopment Agency of the City of San Diego
10 ("RASD"), and is being sued in its capacity as a charter city and in its capacity as the successor agency.

11 3. Defendant PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN
12 DIEGO ("AUTHORITY") is a joint powers authority formed and operating under the Joint Exercise
13 of Powers Act ("JEPA"), Government Code Section 6500 *et seq.* On October 2, 2012, AUTHORITY's
14 members consisted of RASD and CITY; and AUTHORITY was administered by a commission
15 consisting of CITY's treasurer, RASD's assistant executive director, and three members of the public
16 appointed by CITY's mayor and confirmed by the San Diego City Council and the RASD.

17 **Background Information**

18 4. On or around October 2, 2012, CITY and AUTHORITY approved the latter's issuance
19 of what are commonly known as the Spreckels Organ Pavilion Public Parking Garage Lease Revenue
20 Bonds, Series 2012C, and also approved the following related items (among others): a Facilities Lease
21 dated November 1, 2012, by and between AUTHORITY and CITY; a Site Lease dated November 1,
22 2012, by and between CITY and AUTHORITY; a Bond Purchase Agreement by and among
23 AUTHORITY, CITY, and Loop Capital Markets, LLC; and the Indenture between AUTHORITY and
24 Wilmington Trust, National Association (collectively, "Bond Approvals").

25 5. The purpose of the Bond Approvals identified in the preceding paragraph is to raise
26 approximately \$17.4 million to pay CITY's portion of the construction costs for the parking garage
27 portion of the project commonly known as the reclamation and restoration of the Plaza de Panama in
28 Balboa Park ("PDP Project"), as well as the associated transaction and financing costs.

1 6. On or about July 12, 2012, the San Diego City Council adopted Resolution R-307558,
2 which states in part:

3 WHEREAS, the [Plaza de Panama] Committee and the City desire to
4 enter into the Plaza de Panama Improvement Agreement (Agreement)
5 wherein the Committee will donate most of the needed improvements,
6 with the City contributing funds towards the construction of a parking
7 structure located south of the Spreckels Organ Pavilion (Parking
8 Structure), using revenue generated by the Parking Structure; and

9 WHEREAS, because the Committee is donating all of the Plaza de
10 Panama Project improvements except for the Parking Structure, seeking
11 competitive bids or proposals for the design and construction of the
12 improvements, except for the Parking Structure, would not be
13 advantageous to the City; and

14 WHEREAS, the proposed Plan of Finance for the Parking Structure calls
15 for the City to issue tax-exempt bonds (Bonds) to finance the cost of
16 constructing the Parking Structure; * * *

17 7. On August 31, 2012, CITY's debt management director and its chief operating officer
18 issued Report no. 12-107, a Report to the City Council, which states in part: "The City's contribution
19 to the construction of the Parking Garage will be limited to approximately \$14 million--of the estimated
20 \$22.4 million total cost of the garage (excluding the rooftop park), construction cost amounts to \$16
21 million and the remaining \$6.4 million consists of design cost."

22 **Jurisdiction, Venue, and Exhaustion of Administrative Remedies**

23 8. Plaintiff is bringing this action and seeks review by and relief from this Court under
24 Code of Civil Procedure Sections 860 *et seq.* and 1060 *et seq.*¹

25 9. Venue in this Court is proper because the obligations, liabilities, and violations of law
26 alleged in this pleading occurred in the City of San Diego.

27 10. No public hearing was held on the Bond Approvals. Nonetheless, Plaintiff submitted
28 written opposition to the Bond Approvals to CITY prior to their approval.

 11. Plaintiff has no plain, speedy, adequate remedy in the ordinary course of law, since its
members and other members of the public will suffer irreparable harm as a result of Defendants'
violations of the law, as alleged in this pleading. The Bond Approvals also rest on Defendants' failure

¹ Petitioner does not believe that this proceeding is required to be prosecuted as a reverse-validation proceeding under Code of Civil Procedure Section 860 *et seq.* and is doing so only in an abundance of caution.

1 to satisfy a clear, present, ministerial duty to act in accordance with those laws. Even when Defendants
2 are permitted or required by law to exercise their discretion in approving projects under those laws, they
3 remain under a clear, present, ministerial duty to exercise their discretion within the limits of and in a
4 manner consistent with those laws. Defendants have had and continue to have the capacity and ability
5 to approve the Bond Approvals within the limits of and in a manner consistent with those laws, but
6 Defendants have failed and refuse to do so and have exercised their discretion beyond the limits of and
7 in a manner that is not consistent with those laws.

8 12. Plaintiff and its members also have a beneficial right and interest in Defendants'
9 fulfillment of all their legal and public duties, as alleged in this pleading.

10 **FIRST CAUSE OF ACTION:**
11 ***Bond Approvals' Non-Compliance with All Applicable Laws***
12 **(Against All Defendants)**

13 13. The preceding paragraphs are incorporated into this paragraph by reference.

14 14. The Bond Approvals do not comply with all applicable laws. By way of example and
15 not limitation:

16 A. The Bond Approvals are invalid because one of the parties to the Site Lease, the
17 Facilities Lease, the Bond Purchase Agreement, and the Indenture--namely, AUTHORITY--had no legal
18 right or power to enter into those transactions. In particular:

19 i. Under JEPA, AUTHORITY may not exercise any right or power unless
20 at least two of its members have the same right or power.

21 ii. At the time of the Bond Approvals:

22 a. All legal right and power of RASD to participate in its own name
23 had been withdrawn by the Legislature.

24 b. CITY, in its capacity as the successor agency to RASD, was not
25 a member of AUTHORITY.

26 c. CITY was the only member of AUTHORITY with any legal right
27 or power to participate in AUTHORITY.

28 B. The agreement under which AUTHORITY was operating on October 2, 2012--
that certain Second Amended and Restated Joint Exercise of Powers Agreement dated October 29,

1 2002, by and between CITY and RASD ("JPA Agreement")--did not give AUTHORITY the right or
2 power to enter into the Site Lease, Facilities Lease, the Bond Purchase Agreement, or the Indenture and
3 did not give AUTHORITY the right or power to issue bonds. In particular:

4 i. The JPA Agreement limited AUTHORITY to exercising rights and
5 powers common to CITY and RASD, but on that date RASD had no legal right or power to issue bonds.

6 ii. The JPA Agreement gave AUTHORITY the right and power to purchase
7 bonds issued by CITY or RASD but did not give AUTHORITY the right or power to issue bonds.

8 iii. Under the JPA Agreement, AUTHORITY was limited to exercising its
9 rights and powers in the same manner as RASD in the exercise of similar rights and powers, but at that
10 time RASD's rights and powers to issue bonds, enter into finance-related contracts, and encumber assets
11 had all been withdrawn by the Legislature.

12 C. The Bond Approvals violated Section 99 of the San Diego City Charter. In
13 particular:

14 i. Section 99 provides as follows: "The City shall not incur any
15 indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue
16 provided for such year unless the qualified electors of the City, voting at an election to be held for that
17 purpose, have indicated their assent as then required by the Constitution of the State of California, nor
18 unless before or at the time of incurring such indebtedness provision shall be made for the collection
19 of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to
20 constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not
21 exceed forty years from the time of contracting the same."

22 ii. CITY's use of AUTHORITY to issue bonds under the Bond Approvals,
23 instead of CITY issuing the bonds in its own name, is an artifice designed solely to circumvent the
24 voter-assent requirement of Section 99. Given the structure of the transaction contemplated by the
25 Bond Approvals, AUTHORITY could not generate the funds necessary to cover CITY's portion of the
26 costs for the PDP Project without CITY's consent to participate in the transaction in the manner
27 required by the Bond Approvals--even if there were no voter-assent requirement under Section 99.
28

1 iii. The voters of the City of San Diego have not assented to any aspect of
2 the Bond Approvals. Indeed, there has not even been a vote.

3 D. The Bond Approvals violated Section 18(a) of Article XVI of the California
4 Constitution. In particular:

5 i. Section 18(a) provides as follows: “No county, city, town, township,
6 board of education, or school district, shall incur any indebtedness or liability in any manner or for any
7 purpose exceeding in any year the income and revenue provided for such year, without the assent of
8 two-thirds of the voters of the public entity voting at an election to be held for that purpose, except that
9 with respect to any such public entity which is authorized to incur indebtedness for public school
10 purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds
11 for the purpose of repairing, reconstructing or replacing public school buildings determined, in the
12 manner prescribed by law, to be structurally unsafe for school use, shall be adopted upon the approval
13 of a majority of the voters of the public entity voting on the proposition at such election; nor unless
14 before or at the time of incurring such indebtedness provision shall be made for the collection of an
15 annual tax sufficient to pay the interest on such indebtedness as it falls due, and to provide for a sinking
16 fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years
17 from the time of contracting the indebtedness.”

18 ii. CITY’s use of AUTHORITY to issue bonds under the Bond Approvals,
19 instead of CITY issuing the bonds in its own name, is an artifice designed solely to circumvent the
20 voter-assent requirement of Section 18(a). Given the structure of the transaction contemplated by the
21 Bond Approvals, AUTHORITY could not generate the funds necessary to cover CITY’s portion of the
22 costs for the PDP Project without CITY’s consent to participate in the transaction in the manner
23 required by the Bond Approvals--even if there were no voter-assent requirement under Section 18(a).

24 iii. The voters of the City of San Diego have not assented to any aspect of
25 the Bond Approvals. Indeed, there has not even been a vote.

26 E. The Bond Approvals violated San Diego Municipal Code Section 22.0901. In
27 particular:

28 i. The Site Lease involves a lease of CITY property to AUTHORITY.

