

ORDINANCE NUMBER O- 20651 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 27 2016

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR OR DESIGNEE TO SIGN A FINANCING AGREEMENT, AMENDMENTS, AND CERTIFICATIONS FOR FUNDING UNDER THE DRINKING WATER STATE REVOLVING FUND (DWSRF); AUTHORIZING THE CITY ENGINEER TO APPROVE CLAIMS FOR REIMBURSEMENT; AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE A BUDGET AND EXPENDITURE SUMMARY; TO SIGN THE FINAL RELEASE FORM AND TO SIGN THE CERTIFICATION OF PROJECT COMPLETION; AND PLEDGING AND DEDICATING NET WATER REVENUES TO PAYMENT OF DWSRF FINANCING FOR THE LOWER OTAY OUTLET TOWER PROJECT.

WHEREAS, the City of San Diego (Agency) seeks financing from the State Water Resources Control Board (State Water Board) to finance the costs of constructing and/or reconstructing certain public facilities and improvements relating to its water system, including certain treatment facilities, pipelines and other infrastructure for a project commonly known as the Lower Otay Outlet Tower Project (Project); and

WHEREAS, the Agency intends to finance the construction and/or reconstruction of the Project or portions of the Project with moneys (Project Funds) provided by the State of California, acting by and through the State Water Board; and

WHEREAS, the State Water Board may fund the Project Funds with proceeds from the sale of obligations the interest upon which is excluded from gross income for federal income tax purposes (Obligations); and

WHEREAS, prior to either the issuance of the Obligations or the approval by the State Water Board of the Project Funds the Agency desires to incur certain capital expenditures (Expenditures) with respect to the Project from available moneys of the Agency; and

WHEREAS, the Agency has determined that those moneys be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the Agency for the Expenditures from the proceeds of the Obligations. NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

1. That the Mayor or designee is hereby authorized and directed to sign and file, for and on behalf of the Public Utilities Department, a financial assistance application for a financing agreement from the State Water Resource Control Board (State Water Board) for the Project.

2. That the Chief Financial Officer or designee is hereby authorized to sign the Drinking Water State Revolving Fund (DWSRF) program financing agreement for the Project and any amendments thereto, and provide the assurances, certifications and commitments required therefore.

3. That the City Engineer or designee is hereby authorized to represent the Public Utilities Department in carrying out the Agency's responsibilities under the financing agreement, including approving and submitting certified disbursement requests (including Claims for Reimbursement) or other required documentation, certifying compliance with applicable state and federal laws, and making any other necessary certifications.

4. That the Agency does hereby dedicate and pledge its net water revenues and its Water Utility Fund to payment of the DWSRF financing for the Project. The Agency commits to

collecting such revenues and maintain such fund(s) throughout the term of such financing and until the Agency has satisfied its repayment obligation thereunder unless modification or change is approved in writing by the State Water Board. So long as the financing agreement(s) are outstanding, the Agency pledge hereunder shall constitute a lien in favor of the State Water Board on the foregoing fund(s) and revenue(s) without any further action necessary. So long as the financing agreement(s) are outstanding, the Agency commits to maintaining the fund(s) and revenue(s) at levels sufficient to meet its obligations under the financing agreement(s). If for any reason, the said source of revenues proves insufficient to satisfy the debt service of the DWSRF obligation, sufficient funds shall be raised through increased water rates, user charges, or assessments or any other legal means available to meet the DWSRF obligation and to operate and maintain the Project.

5. That the authority granted hereunder shall be deemed retroactive. All acts authorized hereunder and performed prior to the date of this Ordinance are hereby ratified and affirmed. The State Water Board is authorized to rely upon this Ordinance until written notice to the contrary, executed by each of the undersigned, is received by the State Water Board. The State Water Board shall be entitled to act in reliance upon the matters contained herein, notwithstanding to anything to the contrary contained in the formation documents of the City of San Diego or in any other document.

6. That the Agency hereby states its intention and reasonably expects to reimburse Expenditures paid prior to the issuance of the Obligations or the approval by the State Water Board of the Project Funds.

7. That the reasonably expected maximum principal amount of the Project Fund is \$5,505,386.

8. That this ordinance is being adopted no later than 60 days after the date on which the Agency will expend moneys for the construction portion of the Project cost to be reimbursed with Project Funds.

9. That each Agency expenditure will be of a type properly chargeable to a capital account under general federal income tax principles.

10. That to the best of our knowledge, the Agency is not aware of the previous adoption of official intents by the Agency that have been made as a matter of course for the purpose of reimbursing expenditures and for which tax-exempt obligations have not been issued.

11. That this Ordinance is adopted as official intent of the Agency in order to comply with Treasury Regulation § 1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for reimbursement of Project costs.

12. That all the recitals in this Ordinance are true and correct and the Agency so finds, determines and represents.

13. That the Mayor, or his designee, may execute, for and on behalf of said City, the Agreement with the State Water Board for the purpose of completing the Project under the terms and conditions set forth in the Agreement on file in the Office of the City Clerk as Document No. OO- 20651, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor shall deem necessary from time to time in order to carry out the purposes and intent of this Project and Agreement.

14. That the expenditure of an amount not to exceed \$5,505,386 from Water Fund Number 700010.

15. That the Chief Financial Officer or designee is authorized to apply for, accept, appropriate and expend up to \$5,505,386 in DWSRF funds for reimbursement to the Water

Utility Fund for the Project, contingent upon the City Comptroller certifying that the funds are available and contingent upon the financing being secured.

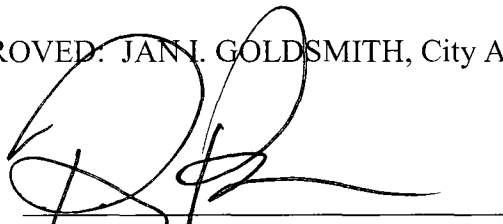
16. That the Chief Financial Officer, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

17. 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.

18. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JANI. GOLDSMITH, City Attorney

By



Raymond C. Palmucci  
Deputy City Attorney

RCP:mt  
4/15/2016  
Or.Dept: Public Utilities  
April 22, 2016 COR.COPY  
Doc. No. 1272217

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 17 2016

ELIZABETH S. MALAND  
City Clerk

By Stacy Bracy  
Deputy City Clerk

Approved: 5/27/16  
(date)

Kevin L. Faulconer  
KEVIN L. FAULCONER, Mayor

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

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

Passed by the Council of The City of San Diego on MAY 17 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherr Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 27 2016

AUTHENTICATED BY:

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

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

(Seal)

By Steph Brady, 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

APR 25 2016, and on MAY 27 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.

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

(Seal)

By Steph Brady, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>20651</u>