

#54  
10/09/18

(O-2019-24)

ORDINANCE NUMBER O- 20993 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 10 2018

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO SAN DIEGO CHARTER SECTION 99 (I) AUTHORIZING A LOAN IN A PRINCIPAL AMOUNT NOT TO EXCEED \$614,000,000 TO FINANCE A PORTION OF THE WATER SYSTEM'S COSTS OF THE PURE WATER PHASE I PROJECTS THROUGH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER AUTHORITY OF THE WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT; (II) APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE (A) WIFIA LOAN AGREEMENT, (B) AMENDMENT TO MASTER INSTALLMENT PURCHASE AGREEMENT, AND (C) COLLATERAL AGENCY, ACCOUNT AND ASSIGNMENT AGREEMENT; AND (III) APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of San Diego (City) has applied to the United States Environmental Protection Agency (EPA) for a loan (WIFIA Loan) under the Water Infrastructure Finance and Innovation Act (WIFIA), the proceeds of which will be utilized to assist in financing a portion of the costs of certain capital improvements to the City's water system (Water System) comprising several Pure Water Phase I Projects (Projects); and

WHEREAS, the City has determined that the WIFIA Loan will provide a low interest cost financing opportunity and therefore the City has applied for a WIFIA Loan of up to \$614 million for the Water System; and

WHEREAS, under San Diego Charter section 99, no contract, agreement or obligation where the City incurs debt extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds majority vote of the City Council; and

WHEREAS, the WIFIA Loan will be payable from and secured by a pledge of net system revenues of the Water Utility Fund (Net System Revenues) on terms beneficial to the City and its residents; and

WHEREAS, the City has determined it is desirable to amend the City's Amended and Restated Master Installment Purchase Agreement (as amended by the MIPA Amendment (as defined below), the MIPA) to clarify certain provisions thereof; and

WHEREAS, the City has determined it is desirable to enter into a collateral agency, account and assignment agreement to, among other things, administer the application of Net System Revenues for the benefit of holders of various obligations of the City payable therefrom and enforce remedies against the Net System Revenues on behalf of such holders; and

WHEREAS, there has been presented to this meeting the following documents (Loan Documents), relating to the WIFIA Loan:

- a. A proposed form of WIFIA Loan Agreement (together with the schedules and exhibits attached thereto, including the form of WIFIA Note attached thereto, the Loan Agreement), by and between the City and the EPA, a copy of which Loan Agreement is on file in the Office of the City Clerk as Document No. 00-20993-1; and
- b. A proposed form of First Amendment to MIPA (MIPA Amendment), by and between the City and San Diego Facilities and Equipment Leasing Corporation (Corporation), a copy of which MIPA Amendment is on file in the office of the City Clerk as Document No. 00-20993-2; and

- c. A proposed form of Collateral Agency, Account and Assignment Agreement (Collateral Agency Agreement), by and between US Bank National Association, as Collateral Agent (Collateral Agent), the City, the Corporation, Public Facilities Financing Authority of the City of San Diego (Authority), US Bank National Association, as Trustee (Trustee), the California State Water Resources Control Board and the EPA, among others, a copy of which Collateral Agency Agreement is on file in the office of the City Clerk as Document No. 00-20993-3 under which Collateral Agency Agreement the Collateral Agent will, among other things, administer the application of Net System Revenues for the benefit of holders of various obligations of the City payable therefrom and enforce remedies against the Net System Revenues on behalf of such holders; and

WHEREAS, the City is authorized to undertake the actions described in this Ordinance pursuant to its Charter and the Constitution and applicable laws of the State of California; NOW, THEREFORE,

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

Section 1. The City Council hereby finds and determines that the statements set forth above in the recitals to this Ordinance are true and correct.

Section 2. The City Council hereby finds that the financing of a portion of the Projects with the WIFIA Loan as set forth in the recitals to this Ordinance will provide significant public benefits.

Section 3. The City hereby authorizes and approves the WIFIA Loan (i) in a maximum principal amount not to exceed \$614 million, (ii) with a maximum interest rate

(excluding default interest that may accrue under the terms of the Loan Agreement) of 5.0% per annum, and (iii) with a maximum maturity date no later than 35 years after the date of completion of the Projects (Basic Terms).

Section 4. The form and content of the form of Loan Agreement submitted to this meeting, a copy of which Loan Agreement is on file in the office of the City Clerk as Document No. O0-20993-1, and the execution, delivery and performance thereof by the City are hereby approved. Each of the Mayor, the Chief Operating Officer and the Chief Financial Officer of the City and their respective designees (each, an Authorized Signatory), is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Loan Agreement in substantially the form presented to this meeting, with such additions and changes therein as any Authorized Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the City Attorney or her specified designee, and with such other changes that may be advised by the municipal advisor to the City (Municipal Advisor), or by outside counsel to the City (Loan Counsel), such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The form and content of the form of MIPA Amendment submitted to this meeting, a copy of which MIPA Amendment is on file in the office of the City Clerk as Document No. O0-20993-2, and the execution, delivery and performance thereof by the City are hereby approved. The Authorized Signatories are each hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the MIPA Amendment, and the Corporation is hereby requested to execute and deliver the MIPA Amendment, with such additions and changes therein as any Authorized Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the

City Attorney or her specified designee, and with such other changes that may be advised by the Municipal Advisor or Loan Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The form and content of the form of Collateral Agency Agreement submitted to this meeting, a copy of which Collateral Agency Agreement is on file in the office of the City Clerk as Document No. ~~00-20993~~<sup>3</sup> and the execution, delivery and performance thereof by the City are hereby approved. The Authorized Signatories are each hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Collateral Agency Agreement, and each of the Corporation and the Authority is hereby requested to execute and deliver the Collateral Agency Agreement, with such additions and changes therein as any Authorized Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the City Attorney or her specified designee, and with such other changes that may be advised by the Municipal Advisor or Loan Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. The obligation of the City to make payments in accordance with the terms of the Loan Agreement shall be a limited obligation of the City payable solely from Net System Revenues.

Section 8. The pledge of and payment from Net System Revenues that secures the WIFIA Loan shall be subordinate to, and such payment may only be made after the satisfaction of, the Parity Obligations (as defined in the MIPA) and on a parity with the payment of the other Subordinated Obligations (as defined in the MIPA), in each case in accordance with the MIPA and the Collateral Agency Agreement.

Section 9. Each of the Director of the Debt Management Department, the Director of the Public Utilities Department, the Assistant Director of the Public Utilities Department (Business Support Branch), the Assistant Director of the Public Utilities Department (Pure Water & Quality Assurance Branch) and the Deputy Director of the Public Utilities Department (Finance & Information Technology Division) (collectively, the Administrative Signatories) is hereby authorized to prepare, execute and deliver, for and on behalf of the City, any and all application materials, forms, legal documents, disbursement requests and reporting (Administrative Tasks) related to and over the term of the WIFIA Loan.

Section 10. All actions heretofore taken by any officers, employees, or agents of the City with respect to the execution, delivery and performance of the WIFIA Loan are hereby approved, confirmed and ratified; and the Chief Operating Officer, the Chief Financial Officer, the City Attorney and any such other officers, employees, or agents of the City as may be authorized by the Mayor of the City, the Chief Operating Officer, the Chief Financial Officer or the City Attorney are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, including, without limitation, to pay necessary and appropriate fees and expenses of the Municipal Advisor, Loan Counsel and other professionals retained by the City, and to execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or desirable to consummate the transactions evidenced by the Loan Documents approved herein and other documents authorized by this Ordinance. In addition, any Authorized Signatory, in consultation with the Chief Financial Officer and the City Attorney and with the advice of the Municipal Advisor and Loan Counsel for the WIFIA Loan, is hereby specifically authorized to approve additions, changes and amendments to the Loan Documents authorized by this Ordinance as any


Authorized Signatory shall determine are necessary or desirable and in the best interests of the City, such determination to be conclusively evidenced by the execution and delivery thereof; provided that no such additions, changes or amendments may be inconsistent with the limitations set forth in Section 3 hereof. Such other officials, employees, and agents of the City as may be authorized by any Authorized Signatory are hereby are each authorized, and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements, and other documents which they, or any of them, may deem necessary or advisable in order to secure the WIFIA Loan and the lawful execution and delivery of the Loan Documents and other documents authorized by this Ordinance, the transactions authorized hereby and evidenced by the Loan Documents and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 11. This Ordinance is subject to the provisions of the San Diego Municipal Code and the San Diego Charter. Subject to those provisions, this Ordinance shall take effect and be in force on the thirtieth (30<sup>th</sup>) day from and after the date of its final passage and, prior to the expiration of fifteen (15) days from the final passage hereof, the City Clerk or her specified designee shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City.

Section 12. The Chief Financial Officer is authorized to establish one or more special interest-bearing account(s) to deposit proceeds from the WIFIA Loan.

Section 13. A full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Bret A. Bartolotta  
Deputy City Attorney


BAB:jdf  
09/11/18  
Or.Dept: Debt Management  
Doc. No.: 1812301\_5

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of OCT 09 2018.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 10/10/18  
(date)

  
KEVIN L. FAULCONER, Mayor

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

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

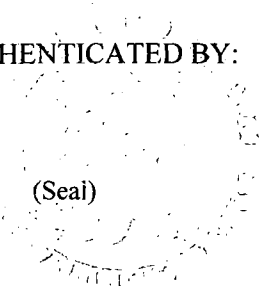


Passed by the Council of The City of San Diego on OCT 09 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<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"/>
Chris Ward	<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"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 10 2018

AUTHENTICATED BY:



(Seal)

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

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

By Linda Irwin, 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

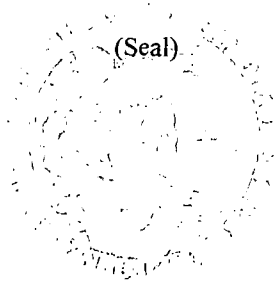
SEP 25 2018

, and on OCT 10 2018

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.

By Linda Irwin, Deputy



(Seal)

Office of the City Clerk, San Diego, California

20993

Ordinance Number O- \_\_\_\_\_