

(O-2022-66)

ORDINANCE NUMBER O- 21429 (NEW SERIES)

DATE OF FINAL PASSAGE FEB 03 2022

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO (I) APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE (A) SUPPLEMENTAL INDENTURES, (B) SUPPLEMENTS TO MASTER INSTALLMENT PURCHASE AGREEMENT, (C) ESCROW AGREEMENTS; (D) BOND PURCHASE AGREEMENT; AND (E) CONTINUING DISCLOSURE CERTIFICATES; (II) APPROVING AND AUTHORIZING THE ISSUANCE AND SALE BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO OF ONE OR MORE SERIES OF ITS SENIOR OR SUBORDINATED SEWER REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$282,000,000 TO FINANCE ADDITIONAL COMPONENTS TO THE WASTEWATER SYSTEM AND ITS SENIOR OR SUBORDINATED SEWER REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THE AMOUNT NECESSARY TO REFINANCE PRIOR OBLIGATIONS RELATED TO THE WASTEWATER SYSTEM; AND (III) APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, California Government Code, Article I of Chapter 5 of Division 7 of Title 1 authorizes and empowers local agencies to form a joint powers authority and California Government Code, Article 4 of Chapter 5 of Division 7 of Title 1 (Mark-Roos Local Bond Pooling Act of 1985) authorizes and empowers such an authority to issue bonds for the purpose of financing and refinancing public capital improvements or projects to further public purposes and effect significant public benefit, as determined by the local agency; and

WHEREAS, The City of San Diego (City), the City as Successor Agency to the Redevelopment Agency of the City of San Diego, and the Housing Authority of the City of San Diego have heretofore entered into a Third Amended and Restated Joint Exercise of Powers Agreement, dated as of January 1, 2013 (Joint Powers Agreement), which created and

established the Public Facilities Financing Authority of the City of San Diego (Authority) for the purpose, among others, of issuing its bonds to be used to provide financial assistance to the City to finance and refinance public capital improvements; and

WHEREAS, the City desires to finance the design, acquisition, construction and installation of improvements to (Projects) the City wastewater system (Wastewater System) or refinance prior obligations (Prior Obligations) comprised of installment payment obligations relating to the Authority's sewer revenue bonds or installment payment obligations under installment sale agreements with the California State Water Resources Control Board related to the Wastewater System, aggregating in principal amount of \$715.6 million, through one or more issuances by the Authority of one or more series of its sewer revenue bonds (each such series of sewer revenue bonds, whether senior or subordinated series, Authorized Sewer Bonds); and

WHEREAS, the City and the Authority are parties to a Master Installment Purchase Agreement dated as of September 1, 1993, as amended and supplemented (Master Installment Purchase Agreement), pursuant to which the Authority sells to the City, and the City purchases from the Authority, Projects, which payments from the City secure the Authorized Sewer Bonds; and

WHEREAS, to provide for payment of the Authorized Sewer Bonds, the City and the Authority will provide for installment payments by entering into a Supplement to the Master Installment Purchase Agreement, which obligation to pay installment payments may constitute "Parity Obligations" or "Subordinated Obligations" under the Master Installment Purchase Agreement; and

WHEREAS, the Authority may sell one or more series of the Authorized Sewer Bonds by negotiated sale pursuant to one or more Bond Purchase Agreements (each, a Bond Purchase

Agreement) among the Authority, the City and the underwriters therein named (Underwriters);
and

WHEREAS, the Council of the City of San Diego (Council) finds that the financing or refinancing of Projects of the Wastewater System results in significant public health benefits, including but not limited to more efficient delivery of service, and that Wastewater System Projects constitute facilities for the transmission and treatment of sewage, recycled or reclaimed water, and wastewater; and

WHEREAS, in order to effect the Projects of the Wastewater System or refinancing of the Prior Obligations related to the Wastewater System, the City has determined to request and approve the Authority's issuance of not to exceed \$282,000,000 aggregate principal amount of Authorized Sewer Bonds (any portion of which may be used to reimburse the City for prior expenditures), in one or more series, pursuant to the Mark-Roos Local Bond Pooling Act of 1985, or in the case of refinancing such principal amount necessary to complete the refinancing; and

WHEREAS, the net proceeds of the Authorized Sewer Bonds to finance the Projects is expected to not exceed \$280,000,000; and

WHEREAS, pursuant to the San Diego Municipal Code, including Section 22.4108 (as amended by Ordinance No. O-19320), the Disclosure Practices Working Group (DPWG) is required to review disclosure documents of the City and related entities, and DPWG is required to review and approve a proposed form of Preliminary Official Statement for the Authorized Sewer Bonds (Preliminary Official Statement), for each such series and issuance, in accordance with the applicable Disclosure Controls and Procedures; and

WHEREAS, under 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 Council; and

WHEREAS, there has been presented to this meeting the following documents, forms of which will relate to each issuance of the Authorized Sewer Bonds:

- (a) A proposed form of Supplemental Indenture (Supplemental Indenture), by and between the Authority and U.S. Bank National Association, as trustee, a copy of which Supplemental Indenture is on file in the Office of the City Clerk as Document No. ~~OO- 21429~~¹ under which the Authority will issue any Authorized Sewer Bonds; and
- (b) A proposed form of Supplement to the Master Installment Purchase Agreement (Supplement to MIPA), by and between the City and the Authority, a copy of which Supplement to MIPA is on file in the Office of the City Clerk as Document No. ~~OO- 21429~~², under which the City will make installment payments to the Authority to support the Authorized Sewer Bonds; and
- (c) A proposed form of Escrow Agreement among the City, the Authority and U.S. Bank National Association, as escrow agent, a copy of which is on file in the office of the City Clerk as Document No. ~~OO- 21429~~³ under which the Prior Obligations will be defeased; and
- (d) A proposed form of Bond Purchase Agreement among the City, the Authority and the Underwriters, a copy of which is on file in the office of the City Clerk as Document No. ~~OO- 21429~~⁴ under which the Authority will sell the Authorized Sewer Bonds to the Underwriters for resale to the public; and
- (e) A proposed form of Continuing Disclosure Certificate (Continuing Disclosure Certificate), to be signed by the City, a copy of which, Continuing Disclosure Certificate is on file

in the Office of the City Clerk as Document No. O-21429-5 under which the City will assist the Underwriters in complying with the provisions of Rule 15c2-12 promulgated by the Securities and Exchange Commission, as amended (Rule) in connection with the issuance of Authorized Sewer Bonds (the documents described in paragraphs (a) through (e) are collectively referred to as the Financing Documents); and

WHEREAS, the City is authorized to undertake all of 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 Council of the City of San Diego, as follows:

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

Section 2. The Council hereby finds that the financing of the Projects or the refinancing of the Prior Obligations will provide significant public benefits in accordance with the criteria specified in section 6586 of the Government Code.

Section 3. The Council hereby finds that it is in the best interests of the City, to finance the Projects or to refinance the Prior Obligations through one or more issuances by the Authority of one or more series of Authorized Sewer Bonds pursuant to a Supplemental Indenture, which Authorized Sewer Bonds will be payable from installment payments made by the City in accordance with one or more Supplements to MIPA.

Section 4. The City hereby authorizes, approves and requests that the Authority authorize and approve (A) the issuance of its Authorized Sewer Bonds in an aggregate principal amount not to exceed \$282,000,000 to provide funds for (a) the financing of the Projects and (b) paying costs of issuance incurred in connection with the issuance of any Authorized Sewer

Bonds by either negotiated or competitive sale; provided that as to each such issuance (i) the true interest cost with respect to the issuance and sale by the Authority of the Authorized Sewer Bonds does not to exceed 5.5%, (ii) the final maturity date of the Authorized Sewer Bonds shall not exceed 30 years from the date thereof; and (iii) there shall first be presented to the DPWG and the Council for approval a form of Preliminary Official Statement for each such series and issuance; and (B) the issuance of its Authorized Sewer Bonds (which may be on a taxable basis) in an aggregate principal amount not to exceed the amount necessary to refinance the Prior Obligations for (a) the refinancing of the Prior Obligations and (b) paying costs of issuance incurred in connection with the issuance of any Authorized Sewer Bonds by either negotiated or competitive sale; provided that as to each such issuance (i) the present value savings shall not be less than the percentage set forth in the City's Debt Policy, (ii) the final maturity date of the Authorized Sewer Bonds shall not exceed the final maturity date of the Prior Obligations being refinanced; and (iii) there shall first be presented to the DPWG and the Council for approval a form of Preliminary Official Statement for each such series and issuance.

Section 5. The form and content of the form of Supplemental Indenture submitted to this meeting, a copy of which is on file in the Office of the City Clerk as Document No.

O O- **21429-1** and the execution, delivery and performance thereof by the Authority are hereby approved. The Mayor, the Chief Operating Officer or the Chief Financial Officer and each of them or any of their respective designees (each, an Authorized Signatory) are each hereby authorized, and any one of the Authorized Signatories is hereby directed, for and in the name of and on behalf of the City, to execute and deliver any requested certificate or instrument evidencing the City's approval of the Supplemental Indenture and each such Supplemental Indenture, and to be bound by certain provisions of the Supplemental Indenture, and the

Authority is hereby requested to execute and deliver one or more Supplemental Indentures in conjunction with one or more issuances of the Authorized Sewer Bonds in one or more series, substantially in the form presented to this meeting, with such additions, changes and amendments 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 specified designee, and with such other changes that may be required by Nixon Peabody LLP, Bond Counsel to the City (Bond Counsel), such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The form and content of the form of Supplement to MIPA between the Authority and the City, a copy of which is on file in the Office of the City Clerk as Document No. O-21429-2 and submitted to this meeting, is hereby approved. The Authorized Signatories are each hereby authorized, and any one of the Authorized Signatories is hereby directed, for and in the name and on behalf of the City, to execute and deliver one or more Supplements to MIPA, in conjunction with one or more issuances of Authorized Sewer Bonds, in one or more series, substantially in the form submitted to this meeting, and the City Clerk is authorized to attest thereto, with such additions, changes and amendments 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 specified designee, and with such other changes that may be required by Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof. Each Supplement to MIPA shall specify whether the obligation to pay installment payments constitutes "Parity Obligations" or "Subordinated Obligations" under the Master Installment Purchase Agreement.

Section 7. The form and content of the proposed Escrow Agreement submitted to this meeting, a copy of which is on file in the Office of the City Clerk as Document No.

00-21429-3 and submitted to this meeting, is hereby approved. Any Authorized Signatory is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the Escrow Agreement in substantially the form presented to this meeting, with such additions and changes therein, including the addition or deletion of underwriters, as any Authorized Signatory shall approve as being in the best interests of the City, and as approved as to form by the City Attorney or specified designee, and with such other changes that may be required by the City Attorney or specified designee, and with such other changes that may be required by Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 8. The form and content of the proposed Bond Purchase Agreement submitted to this meeting, a copy of which is on file in the Office of the City Clerk as Document No. 00-21429-4 and submitted to this meeting, is hereby approved. Any Authorized Signatory is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the Bond Purchase Agreement in substantially the form presented to this meeting, with such additions and changes therein, including the addition or deletion of underwriters, as any Authorized Signatory shall approve as being in the best interests of the City, and as approved as to form by the City Attorney or specified designee, and with such other changes that may be required by the City Attorney or specified designee, and with such other changes that may be required by Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof. City Officers are hereby authorized and directed to pay all of the fees and other costs of issuance of the Authorized Sewer Bonds in accordance with the Bond

Purchase Agreement and as otherwise agreed with the City and the respective parties thereto, including the applicable California Debt and Investment Advisory Commission fees and printer fees.

Section 9. The form and content of the Continuing Disclosure Certificate, a copy of which is on file in the Office of the City Clerk as Document No. 00-21429-5 and submitted to this meeting, is hereby approved. In connection with the public offering of any series of Authorized Sewer Bonds each Authorized Signatory is hereby authorized, and any one of the Authorized Signatory is hereby directed, for and in the name and on behalf of the City, to execute and deliver the Continuing Disclosure Certificate, and the City Clerk is authorized to attest thereto, with such additions, changes and amendments 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 specified designee, and with such other changes as may be required by Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 10. The Mayor or specified designee is authorized to retain Nixon Peabody LLP as bond counsel (Bond Counsel) and disclosure counsel (Disclosure Counsel) to the City and the Authority in connection with the Authorized Sewer Bonds under such contract or other arrangement as the Mayor or designee shall approve as being in the best interests of the City. Such contract or other arrangement shall be in an amount not to exceed \$120,000 for both Bond Counsel and Disclosure Counsel services during the calendar year of 2022.

Section 11. All actions heretofore taken by any officers, employees, or agents of the City with respect to the issuance, delivery, or sale of the Authorized Sewer Bonds are hereby approved, confirmed and ratified; and the Chief Operating Officer of the City, the Chief

Financial Officer of the City, the City Attorney and any such other officers, employees, or agents of the City as may be authorized by the Authorized Signatories 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, pay necessary and appropriate fees and expenses, and 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 Financing Documents referenced herein in accordance with this Ordinance and the Financing Documents approved herein and other documents authorized by this Ordinance, including, without limitation, payment of necessary and appropriate fees and expenses of bond counsel, disclosure counsel, municipal advisor and other professionals retained by the City, and execute and deliver any and all certificates, agreements and other documents (including, but not limited to, the tax compliance certificate) at the time of their original issuance and/or execution which they, or any of them, may deem necessary or advisable to consummate the transactions evidenced by the Financing Documents referenced herein in accordance with this Ordinance. In addition, any Authorized Signatory, in consultation with the Chief Financial Officer of the City, is hereby specifically authorized to approve additions, changes and amendments to the Financing Documents authorized by this Ordinance (including, but not limited to: the timing of any sale determining to sell any Authorized Sewer Bonds; selling the Authorized Sewer Bonds, at competitive or negotiated sale (provided, however, the first series of Authorized Sewer Bonds shall be sold on a negotiated basis); establishing the lien structure for the installment payments securing a series of Authorized Sewer Bonds; designating the series name for any Authorized Sewer Bonds; and establishing the redemption provisions of each series of any Authorized Sewer Bonds, if in each case believed by the Chief Operating Officer of the City or the Chief Financial

Officer of the City, with the advice of the City's municipal advisor for the applicable series of Authorized Sewer Bonds to be in the best interest of the City in light of market conditions, such determination to be conclusively evidenced by the execution and delivery of the Financing Documents authorized by this Ordinance by the City), as any Authorized Signatory shall determine are necessary or desirable and shall require or approve and that such Authorized Signatory believes to be in the best interests of the City, such determination shall be conclusively evidenced by the execution and delivery of such Financing Documents by the City; and provided further that no such addition, change or amendment may be inconsistent with the limitations set forth in Section 4 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 consummate the lawful issuance and delivery of the Authorized Sewer Bonds, and the Financing Documents and other documents authorized by this Ordinance, the transactions authorized hereby and evidenced by the Financings Documents and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 12. The Authorized Signatories are each hereby authorized, and any one of the Authorized Signatories is hereby directed, for and in the name and on behalf of the City, to take all actions and execute any and all documents necessary or advisable to identify Projects of the Wastewater System to be financed, and to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate, carry out, give effect to and comply with the terms and intent of this Ordinance and the consummation of the transactions contemplated hereby.

Section 13. This Ordinance is subject to the provisions of the San Diego Municipal Code and the Charter. Subject to those provisions, this Ordinance shall take effect and be in force on the thirtieth (30th) 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 specified designee of the City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation, published in accordance with Charter section 18.

Section 14. The Chief Financial Officer is authorized to establish one or more special interest-bearing fund(s) to deposit proceeds from the Authorized Sewer Bonds.

Section 15. A full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the Council and the public prior to the day of its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Bret A. Bartolotta
Bret A. Bartolotta
Deputy City Attorney

BAB:jdf
12/14/2021
Or.Dept: Debt Management
Doc. No.: 2838172

I hereby certify that the foregoing Ordinance was passed by the Council of the City of
San Diego, at this meeting of JAN 25 2022.

ELIZABETH S. MALAND
City Clerk

By: Connie Patterson
Deputy City Clerk

Approved: 2/3/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JAN 25 2022, 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 FEB 03 2022.

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 Connie Patterson, 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

JAN 11 2022

, and on

FEB 03 2022.

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.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21429