

#54
4/5/2022

(O-2022-88)

ORDINANCE NUMBER O- 21445 (NEW SERIES)

DATE OF FINAL PASSAGE APR 12 2022

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO SAN DIEGO CHARTER SECTION 99 (I) AUTHORIZING A LEASE ARRANGEMENT IN A PRINCIPAL AMOUNT NOT TO EXCEED \$359.2 MILLION TO FINANCE A PORTION OF THE STORMWATER CAPITAL IMPROVEMENT PROGRAM 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) CREDIT FACILITY DOCUMENTS, (B) SITE LEASES, AND (C) FACILITIES LEASES; AND (III) APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of San Diego (City) Stormwater Capital Improvement Program is comprised of multiple projects (Projects) located throughout the City totaling \$733 million; and

WHEREAS, the City has applied to the United States Environmental Protection Agency (EPA) for a credit facility (WIFIA Credit Facility) under the Water Infrastructure Finance and Innovation Act (WIFIA), the proceeds of which will be utilized to assist in financing 49% of the total cost of the Projects, which is the maximum amount that the EPA will finance under WIFIA; and

WHEREAS, the City will need to utilize other funding sources including pay-go funds, State Revolving Fund loans, lease revenue bonds and commercial paper to pay for the remaining 51% of eligible costs; and

WHEREAS, the City has determined that the WIFIA Credit Facility will provide a low interest cost financing opportunity and therefore the City has applied for a WIFIA Credit Facility of up to \$359.2 million for the Stormwater Capital Improvement Program; and

WHEREAS, the WIFIA Credit Facility will be structured as a lease arrangement under which the City will lease certain stormwater improvements (Leased Property) to the Public Facilities Financing Authority of the City of San Diego (Authority) pursuant to a Site Lease, and the Authority will lease the Leased Property back to the City under a Facilities Lease (Facilities Lease); and

WHEREAS, under the Facilities Lease, the City will be obligated to pay base rental payments from the City's general fund, which amounts will be sufficient in amount to repay the Authority's obligation under the WIFIA Credit Facility; and

WHEREAS, there has been presented to this meeting the following documents relating to the WIFIA Credit Facility:

- a. A proposed form of Site Lease, by and between the City and the Authority, a copy of which is on file in the Office of the City Clerk as Document No. 00 - 21445⁻¹; and
- b. A proposed form of Facilities Lease by and between the City and the Authority, a copy of which is on file in the Office of the City Clerk as Document No. 00 - 21445⁻² and

WHEREAS, under San Diego City Charter (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 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 of this Ordinance are true and correct.

Section 2. The City Council hereby finds that the financing (including reimbursement to the City of prior expenditures) of the Projects as set forth in the recitals of this Ordinance will provide significant public benefits.

Section 3. The City hereby authorizes and approves the WIFIA Credit Facility (i) in a maximum principal amount not to exceed \$359.2 million, (ii) with capitalization of deferred interest not to exceed \$31 million, (iii) with a maximum interest rate (excluding default interest that may accrue under the terms of the Credit Facility) of 6% per annum, and (iv) with a maximum maturity date no later than 35 years after the first principal payment date (collectively, the Basic Terms), which WIFIA Credit Facility may be issued in multiple installments.

Section 4. The form and content of the form of Site Lease submitted to this meeting, a copy of which is on file in the Office of the City Clerk as Document No. ∞21445⁻¹, 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) are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Site Lease 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 specified designee, and with such other changes that may be advised by Nixon Peabody LLP (Credit Facility Counsel), such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The form and content of the form of Facilities Lease submitted to this meeting, a copy of which is on file in the Office of the City Clerk as Document No. ~~06--~~ 21445-2, 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 Facilities Lease 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 specified designee, and with such other changes that may be advised by Credit Facility Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. Each of the Authorized Signatories is hereby authorized to sign and file, for and on behalf of the City, one or more credit agreements related to the WIFIA Credit Facility (together with the schedules and exhibits attached thereto, the Credit Facility Documents, and together with the Site Lease and the Facilities Lease, the WIFIA Financing Documents). The Authorized Signatories are designated to provide the assurances, certifications, and commitments required for the Credit Facility Documents, including executing the Credit Facility Documents, and any amendments or changes thereto necessary to fulfill the purpose of the Projects and the financing thereof. The Authorized Signatories are designated to represent the City in carrying out

the City's responsibilities under the Credit Facility Documents, including certifying disbursement requests on behalf of the City and compliance with applicable state and federal laws.

Section 7. The City hereby commits to the funding of the remaining 51% of eligible costs of the Projects utilizing other funding sources including, but not limited to, pay-go funds, State Revolving Fund loans, lease revenue bonds and commercial paper.

Section 8. The Mayor or specified designee is authorized to amend the current agreement (Current LSA) for legal services with Credit Facility Counsel for services related to State Revolving Fund loans for stormwater projects to (i) specifically include legal services to the City and the Authority in connection with the WIFIA Credit Facility and (ii) extend the term to December 31, 2022 as the Mayor or designee shall approve as being in the best interests of the City.

Section 9. All actions heretofore taken by any officers, employees, or agents of the City with respect to the execution, delivery and performance of the WIFIA Credit Facility 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 Credit Facility 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 WIFIA Financing 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 Credit Facility Counsel, is hereby specifically authorized to approve additions, changes and amendments to the WIFIA Financing 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 Basic Terms set forth in Section 3 hereof. Such other officials, employees, and agents of the City as may be authorized by any Authorized Signatory are each hereby 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 Credit Facility and the lawful execution and delivery of the WIFIA Financing Documents and other documents authorized by this Ordinance, the transactions authorized hereby and evidenced by the WIFIA Financing Documents and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 10. 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 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 11. The Chief Financial Officer is authorized to establish one or more special interest-bearing account(s) to deposit proceeds of the WIFIA Credit Facility.

Section 12. 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 /s/ Bret A. Bartolotta
Bret A. Bartolotta
Deputy City Attorney

BAB:jdf
03/1/2022
Or.Dept: Debt Management
Doc. No.: 2901025

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 05 2022.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 4/12/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on APR 05 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 APR 12 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 [Signature], 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 MAR 15 2022, and on APR 12 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 [Signature] for Connie P., Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 21445