

#569
11/15/22

(O-2023-66)

ORDINANCE NUMBER O- 21570 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 28 2022

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING FINANCING THROUGH THE
DRINKING WATER STATE REVOLVING FUND
AND TAKING RELATED ACTIONS IN CONNECTION
WITH THE MORENA PIPELINE.

WHEREAS, the City of San Diego (City) desires to utilize the Drinking Water State Revolving Fund (DWSRF) financing program to finance the cost of the Morena Pipeline (Project) because it will result in lower borrowing costs compared to other available financing options; and

WHEREAS, on March 20, 2017, by San Diego Resolution No. R-310991, the San Diego City Council (City Council) authorized the Mayor or representative to sign and submit applications for loans and other financial assistance from the State Water Resources Control Board for water projects; and

WHEREAS, on May 22, 2018, the City Council passed San Diego Ordinance No. O-20938 (May 24, 2018), authorizing the financing of the Project with moneys (Project Funds) provided by the State of California, acting by and through the State Water Resources Control Board's DWSRF financing program in an amount not to exceed \$39 million; and

WHEREAS, various factors have caused the total expected cost of the Project to increase greatly since the passage of Ordinance No. O-20938, which cost is currently estimated to be approximately \$60 million; and

WHEREAS, the City still intends to finance the construction of the Project with Project Funds; and

WHEREAS, the State Water Resources Control 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 Resources Control Board of the Project Funds, the City desires to incur certain capital expenditures (Expenditures) with respect to the Project from available moneys of the City; and

WHEREAS, the City has determined that those moneys to 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 City for the Expenditures from the proceeds of the Obligations; 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 Office of the City Attorney has drafted this ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW THEREFORE,

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

Section 1. That the Mayor or designee (Authorized Representatives) are hereby authorized to sign and file, for and on behalf of the City, a Financial Assistance Application for a financing agreement from the State Water Resources Control Board for the planning, design, and construction of the Project. The Authorized Representatives are designated to provide the assurances, certifications, and commitments required for the financial assistance application, including executing a financial assistance agreement from the State Water Resources Control Board in a principal amount that is currently expected not to exceed \$60 million, and any

amendments or changes thereto necessary to fulfill the purpose of the Project and the financing thereof. The Authorized Representatives are designated to represent the City in carrying out the City's responsibilities under the financing agreement, including certifying disbursement requests on behalf of the City and compliance with applicable state and federal laws.

Section 2. That the City hereby dedicates and pledges the net system revenues (Net System Revenues) of the Water Utility Fund (700011) for repayment of the DWSRF financing for the Project, and this pledged source of revenue shall remain in effect throughout the term of such financing unless modification or change of such pledge is approved in writing by the State Water Resources Control Board. So long as the financing agreements are outstanding, the City's pledge hereunder shall constitute a lien in favor of the State Water Resources Control Board on the foregoing Net System Revenues without any further action necessary, and so long as the financing agreements are outstanding, the City commits to maintaining the Net System Revenues at levels sufficient to meet its obligations under the financing agreements.

Section 3. That the Chief Financial Officer is authorized to create a new fund(s), including the Morena Pipeline SRF Fund, to receive and hold the Project Funds, contingent upon the execution of a financial assistance agreement.

Section 4. That the Chief Financial Officer is authorized to appropriate and expend from the Water Utility Fund (700010) up to the total amount of Project Funds received pursuant to the financial assistance agreement for the purpose of funding the Project.

Section 5. That the City 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 Resources Control Board of the Project Funds.

Section 6. That the City expects to reimburse itself for eligible Expenditures from Project Funds, the principal amount of which is reasonably expected not to exceed \$60 million. The City's DWSRF financing agreement will not exceed this amount without approval by the State Water Resources Control Board.

Section 7. That the City intends to utilize all or a portion of Project Funds provided by the State Water Resources Control Board, including from any Obligation proceeds, within ninety (90) days of receipt by the City, to repay all or a portion of any legally permissible bridge financing, such as proceeds from the Water Utility's Commercial Paper Program, the interest of which is excluded from gross income for federal income tax purposes (collectively, City Bridge Financing), and will not use any such Obligation proceeds to pay debt service on the City Bridge Financing more than ninety (90) days after receipt by City.

Section 8. That this Ordinance is being adopted no later than sixty (60) days after the date on which the City will expend moneys for the construction portion of the Project costs to be reimbursed with Project Funds.

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

Section 10. That apart from Resolution No. R-311748 adopted by the City Council on May 22, 2018, to the best of our knowledge, the City is not aware of the previous adoption of official intents by the City 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.

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

Section 12. That all the recitals in this ordinance are true and correct and the City so finds, determines and represents.

Section 13. 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.

Section 14. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

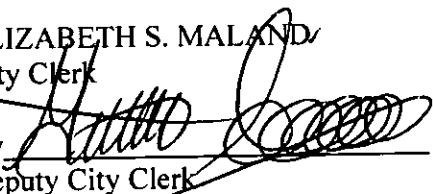
APPROVED: MARA W. ELLIOTT, City Attorney

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

BAB:jdf
10/19/2022
Or.Dept: Debt Mgmt.
Doc. No. 3118469

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 15 2022

ELIZABETH S. MALANDRINO
City Clerk

By 
Deputy City Clerk

Approved: 11/21/22
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

(The date of final passage is November 28, 2022, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.)

Passed by the Council of The City of San Diego on NOV 15 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 type="checkbox"/> | <input type="checkbox"/> | <input checked="" 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 NOV 28 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 Kristen Medina, 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

NOV 01 2022

, and on NOV 28 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 Kristen Medina, Deputy

Office of the City Clerk, San Diego, California

21570

Ordinance Number O-_____