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12/06/2022

(R-2023-259)

RESOLUTION NUMBER R- 314517

DATE OF FINAL PASSAGE DEC 09 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO (I) APPROVING THE FORMS AND AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A REVOLVING CREDIT AGREEMENT AND A FEE AGREEMENT; AND (II) APPROVING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City has secured long-term funding for the Wastewater System portion of the Pure Water Project Phase 1 through both Clean Water State Revolving Fund Loans and Drinking Water State Revolving Fund Loans (collectively, SRF Loans); and

WHEREAS, the time between the payment to contractors with the Sewer Fund money and the City being reimbursed with SRF Loans is expected to be between 3 and 6 months; and

WHEREAS, the City desires to secure an interim financing solution to provide liquidity to the Sewer Fund; and

WHEREAS, the City conducted an RFP process whereby potential bidders were asked to submit proposals to provide the interim financing; and

WHEREAS, the City determined that the revolving credit commitment by Wells Fargo Bank, National Association was the most beneficial interim financing solution (IFS) for the City; and

WHEREAS, there has been presented to this meeting the forms of (i) the Revolving Credit Agreement, by and among the City, the Public Facilities Financing Authority of the City of San Diego (Authority) and Wells Fargo Bank, National Association, and (ii) Fee Agreement, by and among the City, the Authority and Wells Fargo Bank, National Association; and

WHEREAS, City of San Diego Ordinance No. O-21429 dated February 3, 2022, authorized the Agreement for Bond Counsel and Disclosure Counsel Services Related to Interim Financing Solution(s) and Revenue Bonds for the Sewer (Counsel Agreement) pursuant to which Nixon Peabody LLP (Nixon) was engaged as bond counsel and disclosure counsel for both the \$168,250,000 Public Facilities Financing Authority of the City of San Diego Subordinated Sewer Revenue Bonds, Series 2022A (Payable Solely From Subordinated Installment Payments Secured by Wastewater System Net Revenues) (Bonds) and an IFS; and

WHEREAS, the authorized not to exceed amount of the Counsel Agreement is \$135,000, and the City paid Nixon \$110,000 for its services related to the Bonds; and

WHEREAS, Nixon's work on the IFS was expected to be provided contemporaneously with its work on the Bonds, but work on the IFS was delayed several months through no fault of Nixon's, resulting in the IFS becoming a stand-alone transaction; and

WHEREAS, Nixon's quoted rate in its response to the City's Request for Proposal for services related to the IFS as a stand-alone transaction was \$45,000; and

WHEREAS, amending the Counsel Agreement to provide Nixon an additional \$20,000 in compensation, increasing the not to exceed amount from \$135,000 to \$155,000, is warranted based on both the services that Nixon has provided to the City and the Authority regarding the Bonds and the services that it will provide related to the IFS; and

WHEREAS, the Office of the City Attorney has drafted this Resolution based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; and

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

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council hereby finds and determines that the statements set forth above in the recitals to this Resolution are true and correct.

BE IT FURTHER RESOLVED, the form and content of the proposed Revolving Credit Agreement submitted to this meeting, a copy of which is on file in the Office of the City Clerk as Document No. R- 314517-1, and the execution, delivery and performance thereof by the City 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 the Revolving Credit Agreement, 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 the City Attorney or specified designee, and with such other changes that may be required by Nixon in its role as bond counsel to the City, such determination and approval to be conclusively evidenced by the execution and delivery thereof by the City. The City hereby approves the performance of the City's obligations under the Revolving Credit Agreement. The City hereby specifically confirms the pledge contained in the Revolving Credit Agreement of the Net System Revenues

to secure the payment of all amounts due under the Revolving Credit Agreement, on the terms and conditions set forth in the Revolving Credit Agreement.

BE IT FURTHER RESOLVED, the form and content of the proposed Fee Agreement submitted to this meeting, a copy of which is on file in the Office of the City Clerk as Document No. R-314517-² and the execution, delivery and performance thereof by the City are 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 Fee Agreement, substantially in the form presented to this meeting, with such additions and changes and amendments therein 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 Nixon, such determination and approval to be conclusively evidenced by the execution and delivery thereof by the City. The City hereby approves the performance of the City's obligations under the Fee Agreement. The City hereby specifically confirms the pledge contained in the Fee Agreement of the Net System Revenues to secure the payment of all amounts due under the Fee Agreement, on the terms and conditions set forth in the Fee Agreement.

BE IT FURTHER RESOLVED, the Mayor or specified designee is authorized to amend the Counsel Agreement to provide Nixon an additional \$20,000 in compensation, increasing the not to exceed amount from \$135,000 to \$155,000, in connection with the Revolving Credit Agreement.

BE IT FURTHER RESOLVED, all actions heretofore taken by any officers, employees, or agents of the City with respect to the Revolving Credit Agreement and Fee Agreement 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 Revolving Credit Agreement and the Fee Agreement referenced herein in accordance with this Resolution and the Revolving Credit Agreement and the Fee Agreement approved herein and other documents authorized by this Resolution, including, without limitation, payment of necessary and appropriate fees and expenses of bond 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 Revolving Credit Agreement and the Fee Agreement referenced herein in accordance with this Resolution.

BE IT FURTHER RESOLVED, the Chief Financial Officer is authorized to establish one or more special interest-bearing fund(s) to deposit proceeds from the Revolving Credit Agreement.

APPROVED: MARA W. ELLIOTT, City Attorney

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

BAB:jdf
11/15/2022
Or.Dept: Debt Management
Doc. No. 3132061

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 06 2022

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 12/9/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on DEC 06 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 checked="" 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 DEC 09 2022

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

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

Office of the City Clerk, San Diego, California
Resolution Number R- 314517