

#59
07/30/24

(O-2024-137)

ORDINANCE NUMBER O- 21856 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 05 2024

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND SOMACH, SIMMONS & DUNN FOR LEGAL SERVICES FOR REGULATORY LITIGATION RELATED TO THE SAN VICENTE RESERVOIR TO EXTEND THE AGREEMENT AN ADDITIONAL FIVE YEARS.

WHEREAS, the City of San Diego (City) and the San Diego County Water Authority (CWA) are exploring the viability of a San Vicente Energy Storage Facility (SVESF), a highly technical energy project involving the power industry in a highly regulated environment overseen by the Federal Energy Regulatory Commission (FERC); and

WHEREAS, the State Water Resources Control Board (SWRCB) has assessed the City and CWA over \$1,900,000 in water certification fees pursuant to a funding formula that the City and CWA allege is unconstitutional; and

WHEREAS, Somach Simmons & Dunn (SS&D) was engaged by both the City and CWA, which share the fees equally, to represent the agencies jointly to protest the premature imposition of the water certification fee by the SWRCB; and

WHEREAS, on March 11, 2019, City Council adopted Resolution R-312248, authorizing a 5-year, \$400,000 Sole Source Outside Counsel contract with SS&D to provide legal services related to the SVESF and San Vicente Reservoir; and

WHEREAS, on December 17, 2021, City Council adopted Resolution R-313823, authorizing an additional amount of \$250,000, bringing the total contract amount to \$650,000 to continue to have the benefit from Mr. Somach and his team's expertise during ongoing litigation with SWRCB, compliance with FERC and protection of the City's water rights; and

WHEREAS, this Second Amendment, which will be effective March 26, 2024, if approved, will extend the Sole Source Legal Services Agreement with SS&D for an additional five years to allow the City to continue to pursue the litigation authorized in 2017 following the SWRCB's imposition of the water certification fee assessment; 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; and

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

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

Section 1. That the Mayor, or designee, is authorized to execute, for and on behalf of the City, the Second Amendment to the Sole Source Agreement with Somach, Simmons and Dunn for legal services related to the San Vicente Reservoir to extend the Agreement for a period of five years, under the terms and conditions set forth in the Second Amendment, which once signed by all Parties will be on file in the Office of the City Clerk as Document No.

00-21856

Section 2. 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 3. 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 Melissa Ables
Melissa D. Ables
Sr. Chief Deputy City Attorney

MDA:
June 18, 2024
Or.Dept: PUD
Doc. No. 3687181

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 30 2024.

DIANA J.S. FUENTES
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 8/2/24
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUL 30 2024, 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"/>
Henry L. Foster III	<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"/>
Kent Lee	<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 AUG 0 5 2024.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Linda Irwin, Deputy
For Connie Patterson

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

JUL 16 2024, and on AUG 0 5 2024.

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)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Linda Irwin, Deputy
For Connie Patterson

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21856</u>