

#57
11/12/24
(O-2025-48)

ORDINANCE NUMBER O- 21896 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 15 2024

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO (I) AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT; AND (II) APPROVING OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

RECITALS

The Council of the City of San Diego (Council) adopts this Ordinance based on the following:

A. The Joint Exercise of Powers Agreement, dated as of May 14, 1991, as amended and restated as of January 11, 1999, further amended and restated on October 29, 2002, and further amended and restated as of January 1, 2013, by and among The City of San Diego, California (City), the City solely in its capacity as the designated Successor Agency to the former Redevelopment Agency of the City of San Diego and the Housing Authority of the City of San Diego (Housing Authority), establishes the Public Facilities Financing Authority of the City of San Diego (Authority), a California joint exercise of powers authority duly organized to provide financial assistance to the City.

B. The San Diego Facilities and Equipment Leasing Corporation (Corporation) is a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (State) that was incorporated to provide financial assistance to the City.

C. The City has provided for the issuance of subordinated water revenue bonds in the form of tax-exempt governmental subordinated water revenue commercial paper notes from time to time in one or more series or subseries, in an aggregate principal amount not to exceed \$250,000,000 at any time (Commercial Paper Notes) that are payable from subordinated installment payments secured by Net System Revenues (as defined in the herein referenced

Installment Purchase Agreement) of the City's Water Utility Fund (Water Utility Fund) to (i) provide short-term financing for the design, acquisition, construction, installation, and improvement of components of the City's water system (Water System), (ii) reimburse the City for eligible expenditures in accordance with the herein described Reimbursement Resolution and (iii) pay costs of issuance incurred in connection with the issuance of Commercial Paper Notes.

D. In order to effect the design, acquisition, construction and installation of improvements to the Water System, the Corporation has sold and will continue to sell components of the Water System improvement project to the City pursuant to an Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2009, as amended and supplemented, including as amended by the First Amendment to Amended and Restated Master Installment Purchase Agreement, dated as of November 14, 2018, each by and between the City and the Corporation, as supplemented by the Collateral Agency, Account and Assignment Agreement, dated as of November 14, 2018, by and among the City, the Corporation, the Authority, the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency, and U.S. Bank National Association as collateral agent under the Collateral Agency Agreement and as Trustee under the Indenture (as defined below), and as supplemented by the 2017 Commercial Paper Supplement and as also supplemented by a 2009 Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2009, a 2009B Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of June 1, 2009, a 2010A Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of June 1, 2010, a 2012A Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of April 1, 2012, a 2016 Supplement to Amended and Restated Master Installment Purchase

Agreement, dated as of June 1, 2016, a 2018 Supplement, dated as of December 1, 2018, a 2020 Supplement, dated as of May 1, 2020, and a 2023 Supplement, dated as of April 1, 2023, each by and between the City and the Corporation, and as further amended and supplemented from time to time in accordance with the terms thereof (collectively, the Installment Purchase Agreement), pursuant to which the Corporation has agreed to sell from time to time certain improvements and additions (comprised of various components, each, a Component) to the Water System and the City has agreed to purchase from time to time certain Components as specified in certain supplements to the Installment Purchase Agreement.

E. In connection with the execution and delivery of each prior supplement, the Authority issued a series of its Water Revenue Bonds under an Indenture, dated as of January 1, 2009, as supplemented and amended by that certain First Supplemental Indenture, dated as of June 1, 2009, that certain Second Supplemental Indenture, dated as of June 1, 2010, that certain Third Supplemental Indenture, dated as of April 1, 2012, that certain Fourth Supplemental Indenture, dated as of June 1, 2016, that certain Sixth Supplemental Indenture, dated as of December 1, 2018, that certain Seventh Supplemental Indenture, dated as of May 1, 2020 and that certain Eighth Supplemental Indenture, dated as of April 1, 2023 (as so amended and supplemented and as amended and supplemented by the Fifth Supplemental Indenture as defined below, the Indenture), each by and between the Authority and U.S. Bank National Association, or any successor or substitute trust company or bank having trust powers, as trustee (Trustee), each with an appropriate series, lien, and purpose designation (as currently outstanding, the Outstanding Subordinated Water Revenue Bonds).

F. The City has installment purchase obligations in connection with the following revenue bonds of the Public Facilities Financing Authority of the City of San Diego and the

following loans of the City: Subordinated Water Revenue Bonds, Series 2016A (Payable Solely From Subordinated Installment Payments Secured by Net System Revenues of the Water Utility Fund), of which \$34,125,000 is currently outstanding; the Subordinated Water Revenue Bonds, Refunding Series 2016B (Payable Solely From Subordinated Installment Payments Secured by Net System Revenues of the Water Utility Fund), of which \$302,245,000 is currently outstanding; the Subordinated Water Revenue Bonds, Series 2018A (Payable Solely From Subordinated Installment Payments Secured by Net System Revenues of the Water Utility Fund), of which \$217,145,000 is currently outstanding; the Senior Water Revenue Bonds, Series 2020A (Payable Solely From Installment Payments Secured by Net System Revenues of the Water Utility Fund), of which \$200,080,000 is currently outstanding; the Senior Water Revenue Bonds, Series 2020B (Payable Solely From Installment Payments Secured by Net System Revenues of the Water Utility Fund), of which \$72,930,000 is currently outstanding; the Senior Water Revenue Bonds, Series 2023A (Payable Solely From Installment Payments Secured by Net System Revenues of the Water Utility Fund), of which \$219,650,000 is currently outstanding; outstanding Senior Drinking Water State Revolving Fund loans (SRF Loans) totaling \$64,912,728; and two Subordinated Water Infrastructure Finance and Innovation Act WIFIA Loan Agreements between the United States Environmental Protection Agency and the City, of which \$432,566,610 is currently outstanding for loan WIFIA-N17125CA (drawdown loan for up to \$614,000,000) and \$0 is currently outstanding for loan WIFIA-N20136CA (drawdown loan for up to \$119,500,000).

G. Resolution No. R-310860 adopted on December 16, 2016 (Original Authorizing Resolution), the City authorized the issuance by the Authority of tax-exempt governmental Subordinated Water Revenue Commercial Paper Notes from time to time, in one or more series

or subseries, in an aggregate principal amount not to exceed \$250,000,000 to provide funds for financing capital improvements to the Water System and pay costs of issuance incurred in connection with the issuance of the Commercial Paper Notes, from time to time, and the City approved the forms of a 2017 Commercial Paper Supplement to Amended and Restated Installment Purchase Agreement (2017 Commercial Paper Supplement) by and between the City and the Corporation, an Assignment Agreement (Assignment Agreement) by and between the Corporation and the Authority, a Fifth Supplemental Indenture (Fifth Supplemental Indenture) by and between the Authority and U.S. Bank National Association (Trustee), an Issuing and Paying Agency Agreement (Issuing and Paying Agency Agreement) by and between the Authority and U.S. Bank National Association (Issuing and Paying Agent), one or more dealer agreements (each, a Dealer Agreement) with a dealer (Dealer), and one or more reimbursement agreements (each, together with the related fee letter agreement, a Reimbursement Agreement) with, and deliver bank notes (each, a Bank Note) to, each Credit Provider (Credit Provider), pursuant to which the initial Credit Providers each issued an irrevocable direct-pay letter of credit to provide credit enhancement and liquidity support for any authorized series or subseries of the Commercial Paper Notes (each, a Commercial Paper Notes Credit Support Instrument) (collectively, the Initial Financing Documents) and authorized the execution and delivery by the City of the Initial Financing Documents to which the City is a party, and the City approved the execution, delivery and performance by the Authority of the Initial Financing Documents to which the Authority is a party, and the distribution of an Offering Memorandum (Offering Memorandum) in conjunction with the issuance from time to time of Commercial Paper Notes, in one or more series or subseries, which Commercial Paper Notes are secured by a subordinate pledge of Net System Revenues.

H. Resolution No. FA-2016-9 adopted on December 16, 2016, the Authority authorized the issuance by the Authority of its tax-exempt Commercial Paper Notes from time to time, in one or more series or subseries, in an aggregate principal amount not to exceed \$250,000,000 to provide funds for the financing improvements to the Water System and pay costs of issuance incurred in connection with the issuance of the Commercial Paper Notes, from time to time, and in connection therewith authorized the execution and delivery by the Authority of the Initial Financing Documents to which the Authority is a party and the distribution of the Offering Memorandum in connection with the issuance of the Commercial Paper Notes from time to time.

I. Resolution No. FELC-2016-2 adopted on November 29, 2016, the Corporation authorized the execution and delivery of the Initial Financing Documents to which the Corporation is a party.

J. In furtherance of the issuance of the Commercial Paper Notes under the Indenture, (i) the City entered into the 2017 Commercial Paper Supplement with the Corporation (which 2017 Commercial Paper Supplement specified a subordinate pledge of Net System Revenues for the Commercial Paper Notes) and the Corporation entered into the Assignment Agreement with the Authority, (ii) the City caused the Authority to enter into the Fifth Supplemental Indenture with the Trustee, the Issuing and Paying Agency Agreement with the Issuing and Paying Agent, and one or more dealer agreements (each, an Initial Dealer Agreement and a Dealer Agreement) with the initial Dealers for the Commercial Paper Notes; and (iii) the City entered into two reimbursement agreements with, and delivered bank notes to the initial Credit Providers pursuant to which the initial Credit Providers each issued the initial Commercial Paper Notes Credit Support Instruments.

K. Prior to the expiration of the initial Commercial Paper Notes Credit Support Instruments, the City determined that it was in the best interests of the City to replace each of the initial Commercial Paper Notes Credit Support Instruments with a new Commercial Paper Notes Credit Support Instrument.

L. Ordinance No. O-21390 adopted following a second reading thereof on November 9, 2021, approved by the Mayor on November 10, 2021 and effective on December 10, 2021 (the "2021 Ordinance"), the City approved the form of a new reimbursement agreement (together with the related fee letter agreement) with, and delivery of a bank note to, Bank of America, N.A. ("BANA"), pursuant to which the City anticipated that BANA would issue an irrevocable direct-pay letter of credit to provide credit enhancement and liquidity support for any authorized series or subseries of the Commercial Paper Notes.

M. By the 2021 Ordinance, the City also ratified its prior request of the Authority that the Authority issue and sell its tax-exempt governmental Subordinated Water Revenue Commercial Paper Notes from time to time, in one or more series or subseries, in an aggregate principal amount not to exceed \$250,000,000 at any time to provide funds for financing capital improvements to the Water System and pay costs of issuance incurred in connection with the issuance of the Commercial Paper Notes from time to time, ratified and reapproved the forms and content of the Initial Financing Documents previously approved by the City Council in connection with the Commercial Paper Notes, and, pursuant to Charter section 99, ratified and reapproved the execution, delivery and performance thereof by the City of the Initial Financing Documents to which it is a party, and approved, confirmed and ratified all actions theretofore taken by any officers, employees, or agents of the City with respect to such a new reimbursement agreement (together with the related fee letter agreement) with BANA and the reauthorization of

the Initial Financing Documents, the issuance, delivery, or sale of the Commercial Paper Notes and the distribution of the Offering Memorandum in connection therewith, or any amendment or supplement to the Offering Memorandum.

N. By Resolution No. FA-2021-4 adopted on November 2, 2021, the Authority approved the form of and authorized the distribution of Offering Memorandum in connection with the issuance of the Commercial Paper Notes from time to time, approved the form and authorized the execution and delivery of a Letter of Representations, authorized the appointment of additional or replacement Dealers or Issuing and Paying Agent from time to time, and authorized the execution and delivery of any and all documents (including letters of representation) necessary or advisable in connection with any amendments, supplements, restatements and replacements of the Reimbursement Agreements, or any reimbursement agreements, fee letter agreements, revolving notes, direct placement revolving credit agreements or direct placement revolving notes to provide for the delivery of additional Commercial Paper Notes Credit Support Instrument.

O. By Resolution No. FELC-2021-1 adopted on November 18, 2021, the Corporation approved the forms and authorized the execution and delivery of a Letter of Representations in connection with the Commercial Paper Notes, authorized the execution and delivery of any and all documents (including letters of representations) necessary or advisable, and any amendments, supplements, restatements or replacements of the 2017 Commercial Paper Supplement or the Assignment Agreement, to facilitate the delivery or amendment of any Commercial Paper Notes Credit Support Instrument.

P. In order to provide for the issuance of the BANA Commercial Paper Notes Credit Support Instrument (as defined below), City entered into a reimbursement agreement (together

with the related fee letter agreement, the “Initial BANA Reimbursement Agreement”) with, and delivered a bank note (the “BANA Bank Note”), to BANA, pursuant to which BANA issued an irrevocable direct-pay letter of credit (the “BANA Commercial Paper Notes Credit Support Instrument”) to provide credit enhancement and liquidity support for the Commercial Paper Notes.

Q. On June 20, 2024, the City issued a Request for Proposal (RFP) No. 10089764-21-W-04 for Irrevocable Direct-Pay Letter of Credit Facilities in connection with the Public Facilities Financing Authority of the City of San Diego Subordinated Water Revenue Commercial Paper Notes Program (the “RFP”), in order to select a Commercial Paper Notes Credit Support Instrument to support the Commercial Paper Notes upon expiration of the BANA Commercial Paper Notes Credit Support Instrument on January 31, 2025.

R. The City has determined that the proposal submitted by BANA is the most advantageous to the City considering the evaluation factors set forth in the RFP, subject to the negotiation of acceptable documentation.

S. The City has determined that it is in the best interests of the City to enter into a first amendment to reimbursement agreement (together with the related amended and restated fee letter agreement, the First Amendment to Reimbursement Agreement) with, BANA, pursuant to which the BANA will issue an amendment to the BANA Commercial Paper Notes Credit Support Instrument extending the term of the BANA Commercial Paper Notes Credit Support Instrument (the “BANA Commercial Paper Notes Credit Support Instrument Extension Amendment”) for a period of approximately three years from the current letter of credit expiration date of the BANA Commercial Paper Notes Credit Support Instrument (or such other period as determined by the City).

T. 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 City Council.

U. There has been presented to this meeting a proposed form of the First Amendment to Reimbursement Agreement (including the related amended and restated fee letter agreement), by and between the City and BANA, a copy of which is on file in the Office of the City Clerk as Document No. 00-21896, under which BANA will issue the BANA Commercial Paper Notes Credit Support Instrument Extension Amendment.

V. 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

ACTION ITEMS

Be it ordained by the Council of the City of San Diego:

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

Section 2. The form and content of the First Amendment to Reimbursement Agreement (which includes the related amended and restated fee letter agreement) are hereby approved, and the execution, delivery and performance thereof by the City of the First Amendment to Reimbursement Agreement, and the performance by the City of the Initial BANA Reimbursement Agreement, as amended by the First Amendment to Reimbursement Agreement (as so amended, the "BANA Reimbursement Agreement"), is hereby approved. The Chief Operating Officer, the Chief Financial Officer of the City (CFO) and each of them or any of their respective designees (each an Authorized Signatory) are hereby jointly and severally authorized and directed, for and in the name and on behalf of the City, to execute and deliver the First

Amendment to Reimbursement Agreement substantially in the form submitted to this meeting, and the City Clerk is authorized to attest thereto, with such additions and changes therein as an Authorized Signatory shall determine are necessary or desirable and approve as being in the best interests of the City in consultation with the City's municipal advisor, and as approved as to form by the City Attorney or his, her or their specified designee, and with such other changes that may be required by Note Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. All actions heretofore taken by any officers, employees, or agents of the City with respect to the First Amendment to Reimbursement Agreement are hereby approved, confirmed and ratified; and the Chief Operating Officer, the CFO, the Department of Finance Director and City Comptroller, 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 or the CFO (each a City Representative) 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 First Amendment to Reimbursement Agreement in accordance with this Ordinance. In addition, any City Representative, in consultation with the City's municipal advisor, is hereby specifically authorized to approve additions and changes to the First Amendment to Reimbursement Agreement authorized by this Ordinance, as any City Representative shall determine are necessary or desirable and shall require or approve and that such City Representative believes to be in the best interests of the City, such determination shall be conclusively evidenced by the execution and delivery of the

First Amendment to Reimbursement Agreement by the City; and provided further that no such addition or changes may be inconsistent with the limitations set forth in Section 2 hereof and provided further that such changes on additions are consistent with limitations in Section 4 of the 2021 Ordinance. 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 delivery and performance of the First Amendment to Reimbursement Agreement and other documents authorized by this Ordinance, and the transactions authorized hereby and evidenced by the First Amendment to Reimbursement Agreement. Without limiting the foregoing, the Authorized Signatories, in consultation with the City's municipal advisor, without further action of the City Council, are hereby authorized and directed, jointly and severally, for and in the name of and on behalf of the City, pursuant to Charter section 99, to execute and deliver any amendments, supplements, restatements and replacements of the BANA Reimbursement Agreement, to extend the term of the BANA Commercial Paper Notes Credit Support Instrument or increase or decrease the maximum principal amount of Commercial Paper Notes supported by the BANA Commercial Paper Notes Credit Support Instrument; provided that any such document shall be substantially in the forms of the equivalent documents executed and delivered by an Authorized Signatory pursuant to this Ordinance or pursuant to any other authorization from the City Council in conjunction with the Commercial Paper Notes. The Authorized Signatories, without further action of the City Council, are hereby authorized and directed, jointly and severally, for and in the name of and on behalf of the City, pursuant to Charter section 99, to execute and deliver any

reimbursement agreements, fee letter agreements, revolving notes, direct placement revolving credit agreements or direct placement revolving notes, to provide for the delivery of additional or replacement Commercial Paper Notes Credit Support Instruments from time to time, and the Authorized Signatories, in consultation with the City's municipal advisor, without further action of the City Council, are hereby further authorized and directed, jointly and severally, for and in the name of and on behalf of the City, pursuant to Charter section 99, to execute and deliver any amendments, supplements, restatements or replacements of any such reimbursement agreements, fee letter agreements or revolving notes, to extend the term of such additional or replacement Credit Support Instrument or increase or decrease the maximum principal amount of Commercial Paper Notes supported by such additional Credit Support Instrument, and to authorize any necessary designation of additional series or subseries of the Commercial Paper Notes (and any corresponding establishment of subaccounts with respect to such additional series or subseries) from time to time or any amendments, supplements, restatements or replacements of the Initial Financing Documents and any and all certificates, agreements and other documents (including the BANA Bank Note) necessary or desirable to consummate the transactions evidenced by the Initial BANA Reimbursement Agreement (collectively, the "Existing Financing Documents") and together with the First Amendment to Reimbursement Agreement (collectively, the "Financing Documents"), to facilitate such delivery or amendment; provided that any such documents comply with the provisions of this Ordinance, the 2021 Ordinance or any other authorization from the City Council in conjunction with the Commercial Paper Notes.

Section 4. That the CFO is authorized to expend an amount estimated to be \$2,900,000 over the approximately three (3) year extended term of the BANA Commercial Paper Notes Credit Support Instrument for ongoing facility fees pursuant to the BANA Reimbursement

Agreement at the current credit rating level and initially estimated to be \$420,000 for Fiscal Year 2025 from the Water Utility Operating Fund, Fund 700011, for the purpose of executing same, with any expenses in future fiscal years contingent upon both City Council's adoption of the Appropriation Ordinance for the applicable fiscal year and the CFO's first furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

Section 5. The Council dispenses with a full reading of this Ordinance before its passage because a written copy of this Ordinance was made available to the Council and the public before the date of its passage.

Section 6. This Ordinance will take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By



David L. Powell
Deputy City Attorney

DLP:jdf
10/15/2024
Or.Dept: Debt Management
Doc. No. 3846298

I certify that the Council of the City of San Diego adopted this Ordinance at a meeting held on
NOV 12 2024

DIANA J.S. FUENTES
City Clerk

By 
Deputy City Clerk

Approved: 11/15/24
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on NOV 12 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 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 NOV 15 2024

AUTHENTICATED BY:

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

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

(Seal)

By Linda Irwin, 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

OCT 29 2024, and on NOV 15 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.

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

(Seal)

By Linda Irwin, Deputy
For Krystell Medina

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21896</u>