#58
9/25/18

(O-2019-23)

ORDINANCE NUMBER O-20990 (NEW SERIES)

DATE OF FINAL PASSAGE SEP 27 2018

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO SAN DIEGO CHARTER SECTION 99 (I) APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE (A) SUPPLEMENTAL INDENTURES, (B) SUPPLEMENTS TO MASTER INSTALLMENT PURCHASE AGREEMENT, AND (C) CONTINUING DISCLOSURE CERTIFICATES; (II) APPROVING AND AUTHORIZING THE ISSUANCE AND SALE BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO OF ONE OR MORE SERIES OF ITS WATER REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $283,000,000 TO FINANCE ADDITIONAL CAPITAL IMPROVEMENTS TO THE WATER SYSTEM, INCLUDING BY PAYING THE SUBORDINATED WATER REVENUE COMMERCIAL PAPER NOTES OF THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO; (III) AUTHORIZING THE CITY ATTORNEY TO APPOINT BOND COUNSEL AND DISCLOSURE COUNSEL; AND (IV) APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California authorizes and empowers local agencies to form a joint powers authority, separate and apart from the contracting parties, and Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (known as the Marks-Roos Local Bond Pooling Act of 1985) authorizes and empowers such an authority to issue bonds for the purpose of financing public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits to local agencies; and

WHEREAS, the City of San Diego, California (City), and the Redevelopment Agency of the City of San Diego entered into a Joint Exercise of Powers Agreement, dated as of May 14,

1991, as amended and restated as of January 11, 1999, and as again amended and restated on October 29, 2002, and as again amended and restated as of January 1, 2013 to include the Housing Authority of the City of San Diego (Housing Authority) as a member, establishing 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; and

WHEREAS, 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 that was incorporated to provide financial assistance to the City; and

WHEREAS, in order to effect the design, acquisition, construction and installation of improvements (Projects) to the City's water system (Water System), the Corporation sold components of the City's water system improvement project to the City pursuant to an Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2009, as may be amended by a First Amendment to Amended and Restated Master Installment Purchase Agreement and as supplemented by a 2009A 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, and a 2017 Commercial Paper Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2017, and as may be subsequently supplemented from time to time (collectively, the

Installment Purchase Agreement), each by and between the City and the Corporation, pursuant to which the Corporation has agreed to sell certain improvements and additions (comprised of various components, each, a Component) to the Water System and the City has agreed from time to time to purchase certain Components as specified in certain supplements to the Installment Purchase Agreement; and

WHEREAS, in connection with the execution and delivery of each prior supplement, the Authority issued various series of water revenue bonds and commercial paper notes under an Indenture, dated as of January 1, 2009, as supplemented and amended by the First Supplemental Indenture, dated as of June 1, 2009, the Second Supplemental Indenture, dated as of June 1, 2010, the Third Supplemental Indenture, dated as of April 1, 2012, the Fourth Supplemental Indenture, dated as of June 1, 2016, and the Fifth Supplemental Indenture, dated as of January 1, 2017 (as amended and supplemented, 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 Parity Water Revenue Bonds and Outstanding Subordinated Water Revenue Bonds, respectively); and

WHEREAS, the City has installment purchase obligations in connection with the following water revenue bonds and commercial paper notes: the Public Facilities Financing Authority of the City of San Diego Subordinated Water Revenue Bonds, Refunding Series 2012A (Payable Solely From Subordinated Installment Payments Secured by Net System Revenues of the Water Utility Fund), of which $119,360,000 is currently outstanding; the Public Facilities Financing Authority of the City of San Diego Subordinated Water Revenue Bonds, Series 2016A (Payable Solely From Subordinated Installment Payments Secured by Net System

Revenues of the Water Utility Fund), of which $39,115,000 is currently outstanding; the Public Facilities Financing Authority of the City of San Diego 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 $448,290,000 is currently outstanding; the Subordinated Water Revenue Commercial Paper Notes, Series A (Payable Solely from Subordinated Installment Payments Secured by Net System Revenues of the Water Utility Fund) (the Series A Commercial Paper Notes), of which $13,754,000 is currently outstanding; the Subordinated Water Revenue Commercial Paper Notes, Series B (Payable Solely from Subordinated Installment Payments Secured by Net System Revenues of the Water Utility Fund) (the Series B Commercial Paper Notes and, together with the Series A Commercial Paper Notes, the Commercial Paper Notes), of which $154,459,000 is currently outstanding; and the outstanding Drinking Water State Revolving Fund loans (SRF Loans); and

WHEREAS, the City issued the Commercial Paper Notes to initially finance various Projects with the expectation that the Commercial Paper Notes would be paid with the proceeds of water revenue bonds; and

WHEREAS, to provide continuity with its Outstanding Subordinated Water Revenue Bonds, the City has determined to cause the issuance of the herein described water revenue bonds under the Indenture and provide for payment thereof from installment payments under the Installment Purchase Agreement; and

WHEREAS, the City has determined to approve and request that the Authority authorize and approve one or more series of senior or subordinate water revenue bonds payable from Installment Payments or Subordinated Installment Payments secured by Net System Revenues of the Water Utility Fund as specified in one or more Supplements to the Installment Purchase

Agreement to finance additional capital improvements to the Water System and pay the Commercial Paper Notes, on terms beneficial to the City and its residents; and

WHEREAS, the Installment Purchase Agreement, as amended, provides that each Supplement shall specify either a senior or subordinate pledge of Net System Revenues (as defined in the Installment Purchase Agreement) and this Ordinance will authorize the execution and delivery of one or more Supplements in conjunction with one or more issuances of senior or subordinate water revenue bonds, in one or more series and on one or more sale dates, as any Authorized Signatory (as defined below) shall determine to be necessary or desirable and approve as being in the best interests of the City; and

WHEREAS, the Indenture, as amended, provides that each Supplemental Indenture shall specify the issuance of Parity Water Revenue Bonds or Subordinated Water Revenue Bonds secured by and payable from Net System Revenues secured, respectively, by either a senior or subordinate pledge of Net System Revenues (as defined in the Installment Purchase Agreement) and this Ordinance will authorize the execution and delivery of one or more Supplemental Indentures in conjunction with one or more issuances of Parity Water Revenue Bonds or Subordinated Water Revenue Bonds (Payable Solely from Installment Payments Secured by Net System Revenues of the Water Utility Fund), for new money purposes, including by paying the Commercial Paper Notes, in one or more series and on one or more sale dates (Water Revenue Bonds), as any Authorized Signatory shall determine to be necessary or desirable and approve as being in the best interests of the City; and

WHEREAS, to provide for the payment of the Water Revenue Bonds as described in this Ordinance, the City and the Corporation will provide for installment payments by entering into one or more new Supplements to the Installment Purchase Agreement; and

WHEREAS, to facilitate the proposed financing, the Corporation, as assignor, will execute an assignment agreement respecting the above-described Supplements to the Installment Purchase Agreement, pursuant to which the Corporation will assign all of its right, title and interest in and to the Supplements to the Authority, as assignee; and

WHEREAS, in accordance with Section 1.150-2 of the United States Treasury Regulations, the City has declared its reasonable intent to reimburse costs, if any, of certain Components with the proceeds of the Water Revenue Bonds incurred prior to the date of issuance thereof; and

WHEREAS, pursuant to the San Diego Municipal Code, including Section 22.4108 (as amended by Ordinance No. O-19320), the Disclosure Practices Working Group (DPWG) is required to review disclosure documents of the City and related entities, and DPWG is required to review and approve a proposed form of Preliminary Official Statement for the Water Revenue Bonds (Preliminary Official Statement), for each such series and issuance, in accordance with the applicable Disclosure Controls and Procedures; and

WHEREAS, pursuant to section 90.1 of the San Diego City Charter (Charter), the Council of the City of San Diego (City Council) may authorize the issuance of revenue bonds by a two-thirds vote of the members of the City Council provided the bonds are not secured by or payable from the general fund or any fund other than an enterprise fund and that the purpose of the bond issue is to provide for the construction, reconstruction or replacement of water facilities, wastewater facilities, or stormwater facilities, all such revenue bonds to be issued and sold in accordance with state law or any procedure established by ordinance; and

WHEREAS, Charter section 90.1 is inapplicable because the Water Revenue Bonds will be issued by the Authority, not the City; and

WHEREAS, 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; and

WHEREAS, there has been presented to this meeting the following documents, forms of which will relate to each issuance of the Water Revenue Bonds:

a. A proposed form of Supplement to Amended and Restated Master Installment Purchase Agreement (Supplement), by and between the City and the Corporation, a copy of which Supplement is on file in the Office of the City Clerk as Document No. O-20990-1 supplementing the Installment Purchase Agreement, under which Supplement the City will make installment payments to the Corporation; and

b. A proposed form of Assignment Agreement (Assignment Agreement), by and between the Corporation, as assignor, and the Authority, as assignee, a copy of which Assignment Agreement is on file in the Office of the City Clerk as Document No. O-20990-2 under which Assignment Agreement the Corporation will assign all of its right, title, and interest in and to the Supplement to the Authority to support the payment of debt service on the Water Revenue Bonds; and

c. A proposed form of Supplemental Indenture (Supplemental Indenture), by and between the Authority and the bond trustee to be named therein, a copy of which Supplemental Indenture is on file in the Office of the City Clerk as Document No. O-20990-3 under which Supplemental Indenture the Authority will issue the Water Revenue Bonds; and

d. A proposed form of Continuing Disclosure Certificate (Continuing Disclosure Certificate), to be signed by the City, a copy of which, Continuing Disclosure Certificate is on file in the Office of the City Clerk as Document No. O-20990-4 under which Continuing Disclosure Certificate the City will comply with the provisions of Rule 15c2-12 promulgated by the Securities and Exchange Commission, as amended (Rule) in connection with the issuance of the Water Revenue Bonds (the documents described in paragraphs a. through e. are collectively referred to as the Financing Documents); 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 to this Ordinance are true and correct.

Section 2. The City hereby authorizes and approves and requests the Authority authorize and approve the issuance of its Water Revenue Bonds in an aggregate principal amount not to exceed $283,000,000 to provide funds for (a) the financing of Projects, including paying the Commercial Paper Notes previously issued to finance Projects, through the issuance and sale by the Authority of the Water Revenue Bonds and (b) paying costs of issuance incurred in connection with the issuance of the Water Revenue Bonds by public offering; provided that as to each such issuance (i) the true interest cost with respect to the issuance and sale by the Authority of the Water Revenue Bonds not to exceed 5.50% and (ii) there shall first be presented to the

Disclosure Practices Working Group and this Council for approval a form of Preliminary Official Statement for each such series and issuance.

Section 3. The form and content of the form of Supplemental Indenture submitted to this meeting, a copy of which Supplemental Indenture is on file in the Office of the City Clerk as Document No. O-20990-3, and the execution, delivery and performance thereof by the Authority are hereby approved. Any of the Chief Operating Officer or the Chief Financial Officer of the City and each of them or any of their respective designees (each, an Authorized Signatory), are each hereby authorized, and any one of the Authorized Signatory is hereby directed, for and in the name and on behalf of the City, to execute and deliver any requested certificate or instrument evidencing the City's approval of the Supplemental Indenture and each such Supplemental Indenture, and to be bound by certain provisions of the Supplemental Indenture, and the Authority is hereby requested to execute and deliver one or more Supplemental Indentures in conjunction with one or more issuances of the Water Revenue Bonds 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 her specified designee, and with such other changes that may be required by Hawkins Delafield & Wood LLP, Bond Counsel to the City (Bond Counsel), such approval to be conclusively evidenced by the execution and delivery thereof. Each such issuance and each Supplemental Indenture shall specify either a senior or subordinate pledge of Net System Revenues (as defined in the Installment Purchase Agreement).

Section 4. The form and content of the form of Supplement, by and between the City and the Corporation, a copy of which Supplement is on file in the Office of the City Clerk as

Document No. O-20990-1, and submitted to this meeting, is hereby approved. The Authorized Signatories are each hereby authorized, and any one of the Authorized Signatories is hereby directed, for and in the name and on behalf of the City, to execute and deliver one or more Supplements, and the Corporation is hereby requested to execute and deliver such Supplements, in conjunction with one or more issuances of Water Revenue Bonds substantially in the form submitted to this meeting, and the City Clerk is authorized to attest thereto, 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 her specified designee, and with such other changes that may be required by Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof. Each Supplement shall specify a senior or subordinate pledge of Net System Revenues (as defined in the Installment Purchase Agreement).

Section 5. The form and content of the form of Assignment Agreement submitted to this meeting, a copy of which Assignment Agreement is on file in the Office of the City Clerk as Document No. O-20990-2, and the assignment by the Corporation of the City's obligations under the related Supplement to the Authority, is hereby approved. The Authorized Signatories are each hereby authorized, and any one of the Authorized Signatories is hereby directed, for and in the name and on behalf of the City, to execute and deliver any requested certificate or instrument evidencing the City's approval of the Assignment Agreement, and each such Assignment Agreement and each of the Authority and the Corporation is hereby requested to execute and deliver one or more forms of the Assignment Agreement, in conjunction with one or more issuances of Water Revenue Bonds 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 her specified designee, and with such other changes that may be required by Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The City hereby acknowledges that the obligation of the City to make Installment Payments to the Authority, in accordance with any Supplement and Assignment Agreement shall be a limited obligation of the City payable solely from Net System Revenues (as defined in the Installment Purchase Agreement) and other funds provided for under the Supplement and any Supplemental Indenture and does not constitute a debt of the City or of the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Section 7. The anticipated source of revenues for payment of the Water Revenue Bonds are the Installment Payments or the Subordinated Installment Payments (as defined in the Supplement) and the other funds provided for under the Supplement and the Supplemental Indenture. The pledge of and the right of payment for the Net System Revenues that secures the Installment Payments shall be on a parity with the payment of the other Parity Obligations (as defined in the Installment Purchase Agreement). The pledge of and the right of payment for the Net System Revenues that secures the Subordinated Installment Payments shall be subordinate to, and such payment may only be made after the satisfaction on an annual basis of, the Parity Obligations and on a parity with the payment of the other Subordinated Obligations (as defined in the Installment Purchase Agreement).

Section 8. The form and content of the form of Continuing Disclosure Certificate, a copy of which is on file in the Office of the City Clerk as Document No. O-20990-4, and

submitted to this meeting, is hereby approved. In connection with the public offering of any series of Water Revenue Bonds, each Authorized Signatory is hereby authorized, and any one of the Authorized Signatory is hereby directed, for and in the name and on behalf of the City, to execute and deliver the Continuing Disclosure Certificate, and the City Clerk is authorized to attest thereto, 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 her specified designee, and with such other changes as are required by Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 9. The City Attorney or her specified designee is authorized to retain Hawkins Delafield & Wood LLP, as bond counsel and disclosure counsel for the City and the Authority in connection with the issuance of Water Revenue Bonds, under such contracts or other arrangements as the City Attorney or her specified designee shall approve and believes to be in the best interests of the City. Such contract or other arrangements shall be in an amount not to exceed $90,000.

Section 10. All actions heretofore taken by any officers, employees, or agents of the City with respect to the issuance, delivery, or sale of the Water Revenue Bonds 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 or the Chief Financial Officer 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 Financing Documents referenced herein in accordance with this Ordinance and the Financing Documents approved herein and other documents authorized by this Ordinance, including, without limitation, payment of necessary and appropriate fees and expenses of bond counsel, disclosure 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 Financing Documents referenced herein in accordance with this Ordinance. In addition, any Authorized Signatory, in consultation with the Chief Financial Officer, is hereby specifically authorized to approve additions, changes and amendments to the Financing Documents authorized by this Ordinance (including, but not limited to, establishing the lien structure for the installment payments securing a series of Water Revenue Bonds, and establishing the redemption provisions of each series of the Water Revenue Bonds, if believed by the Chief Operating Officer of the City or the Chief Financial Officer of the City, with the advice of the City's municipal advisor for the applicable series of Water Revenue Bonds, to be in the best interest of the City in light of market conditions, such determination to be conclusively evidenced by the execution and delivery of the Financing Documents authorized by this Ordinance by the City), as any Authorized Signatory shall determine are necessary or desirable and shall require or approve and that such Authorized Signatory believes to be in the best interests of the City, such determination shall be conclusively evidenced by the execution and delivery of such Financing Documents by the City; and provided further that no such addition, change or amendment may be inconsistent with the limitations set forth in Section 2 hereof.

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 lawful issuance and delivery of the Water Revenue Bonds and the Financing Documents and other documents authorized by this Ordinance, the transactions authorized hereby and evidenced by the Financings Documents and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 11. The Authorized Signatories are each hereby authorized, and any one of the Authorized Signatories is hereby directed, for and in the name and on behalf of the City, to take all actions and execute any and all documents necessary or advisable to identify Projects of the Water System to be financed, and to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate, carry out, give effect to and comply with the terms and intent of this Ordinance and the consummation of the transactions contemplated hereby.

Section 12. This Ordinance is subject to the provisions of the San Diego Municipal Code and the San Diego 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 13. The Chief Financial Officer is authorized to establish one or more special interest-bearing account(s) to deposit proceeds from the Water Revenue Bonds.

Section 14. A full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the Council and the public prior to the day of its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
Bret A. Bartolotta
Deputy City Attorney

BAB:jdf
08/28/18
Or.Dept: Debt Management
Doc. No.: 1809884_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of SEP 25 2018.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 9/27/18
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on SEP 25 2018, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|---|---|---|---|---|
| Barbara Bry | ☒ | ☐ | ☐ | ☐ |
| Lorie Zapf | ☐ | ☐ | ☒ | ☐ |
| Chris Ward | ☒ | ☐ | ☐ | ☐ |
| Myrtle Cole | ☒ | ☐ | ☐ | ☐ |
| Mark Kersey | ☒ | ☐ | ☐ | ☐ |
| Chris Cate | ☒ | ☐ | ☐ | ☐ |
| Scott Sherman | ☒ | ☐ | ☐ | ☐ |
| David Alvarez | ☒ | ☐ | ☐ | ☐ |
| Georgette Gomez | ☐ | ☐ | ☒ | ☐ |

Date of final passage SEP 27 2018.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By Stg Read for Linda Irvin, 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

SEP 11 2018, and on SEP 27 2018.

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.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By Stg Read for Linda Irvin, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-20990