

HAYWARD CITY COUNCIL

RESOLUTION No. ____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A WIFIA LOAN AGREEMENT WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND A RELATED PROMISSORY NOTE IN THE MAXIMUM PRINCIPAL AMOUNT OF \$244,139,000 (EXCLUDING CAPITALIZED INTEREST) TO FINANCE CERTAIN CAPITAL IMPROVEMENTS TO THE WASTEWATER SYSTEM, INCLUDING THE WATER RESOURCE RECOVERY FACILITY IMPROVEMENTS, AND APPROVING RELATED AGREEMENTS AND ACTIONS

WHEREAS, the City of Hayward (the “City”) owns and operates a wastewater collection, pumping, transport, treatment, storage, and disposal system (the “Wastewater System”), including a Water Resource Recovery Facility (the “WRRF”), formerly known as “Water Pollution Control Facility (WPCF); and

WHEREAS, increasing nutrient loadings in San Francisco Bay (the “Bay”) is a growing concern for the Bay water quality community, which has been discussed in both the first Nutrients Watershed Permit (issued 2014) and the second Nutrients Watershed Permit (issued 2019) adopted by the California Regional Water Quality Control Board, San Francisco Bay Region (the “Water Board”); and

WHEREAS, in June 2020, the City completed a comprehensive Master Plan update, designated the WPCF Phase II Facilities Plan, to identify improvements required for the WRRF to upgrade its treatment processes to incorporate nutrient reduction in the treated effluent discharged into the Bay to meet the upcoming regulatory requirements (the “Phase II Project”); and

WHEREAS, on July 10, 2024, the Water Board approved the third Nutrients Watershed Permit which requires the City to reduce nutrient loading discharged into the Bay by 50% by May 1, 2034; and

WHEREAS, the main goal of the Phase II Project is to construct improvements, including a new biological nutrient removal process, 3 MG primary effluent equalization facility, and other improvements, to the WRRF necessary for nutrient removal from treated effluent in compliance with the requirements in the third Nutrients Permit; and

WHEREAS, in accordance with the Master Plan update, the City will also construct a 21,800 square foot building housing a centralized administration building, main control room for WRRF operations, expanded laboratory facilities, SCADA and staff facilities (the “WRRF Administration Building and Laboratory Project”); and

WHEREAS, the City anticipates receiving financing for the Phase II Project and the WRRF Administration Building and Laboratory Project (together, the “Projects”) from (i) the federal Water Infrastructure Finance and Innovation Act (“WIFIA”) program, which is administered by the United States Environmental Protection Agency (“U.S. EPA”), and (ii) publicly-sold City revenue bonds; and

WHEREAS, the City is a charter city organized and existing under the Constitution and laws of the State of California, and, as such, the City is authorized to make and enforce all laws and regulations in respect to municipal affairs under Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and under Section 200 of the Charter of the City, subject only to such restrictions and limitations as may be provided in the Charter of the City and in the Constitution of the State of California; and

WHEREAS, pursuant to its municipal affairs powers as a charter city, the City Council of the City has adopted its Ordinance No. 24-05, enacting the City of Hayward Water and Wastewater Enterprise Revenue Bond Law, constituting Chapter 8, Article 22 of the Hayward Municipal Code (the “Bond Law”), under which the City is authorized to enter into a loan agreement for the purpose of financing improvements to the water enterprise of the City and the Wastewater System; and

WHEREAS, in order to provide financing for the Projects, the City Council wishes at this time to authorize the execution and delivery of a WIFIA Loan Agreement with U.S. EPA (including the exhibits and schedules attached thereto, the “Loan Agreement”), and the issuance and delivery of a promissory note to U.S. EPA in substantially the form included in the Loan Agreement under the provisions of the Bond Law; and

WHEREAS, the City’s payment obligations under the Loan Agreement and the promissory note will be payable from and secured by a pledge of and lien on the net revenues of the Wastewater System, on a parity with the pledge and lien that secures certain other obligations of the City incurred to finance the Wastewater System, including (i) that certain outstanding Agreement No. 05-807-550-0, by and between the City and the State Water Resources Control Board, dated July 27, 2006 (the “2006 SRF Agreement”), and (ii) revenue bonds issued by the City to finance the Projects; and

WHEREAS, as required by California Government Code Section 5852.1 enacted January 1, 2018 by Senate Bill 450, attached hereto as Appendix A is certain financial information relating to the Loan Agreement that has been obtained by the City Council and is hereby disclosed and made public; and

WHEREAS, the City Council has previously approved a Debt Issuance and Management Policy that complies with California Government Code Section 8855, and the execution and delivery of the Loan Agreement will be in compliance with said policy; and

WHEREAS, the City Council of the City has duly considered such transactions and has determined to approve said transactions in the public interest of the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward as follows:

Section 1. Approval of Loan Agreement. For the purpose of providing long-term financing for a portion of the costs of the Projects, the City Council hereby authorizes and approves the borrowing of funds by the City from U.S. EPA under the Loan Agreement in substantially the form on file with the City Clerk, together with any changes therein or additions thereto deemed advisable by the City Manager, the Assistant City Manager, the Director of Finance, or the Director of Public Works (each, an "Authorized Officer"). Amounts due under the Loan Agreement shall be payable by the City from the net revenues of the Wastewater System and subject to the other terms and conditions set forth in the Loan Agreement as finally executed and delivered by the City; provided, that the maximum amount that may be borrowed by the City under the Loan Agreement shall not exceed \$244,139,000 (excluding capitalized interest) and the interest rate on the Loan Agreement shall not exceed 5.25% per annum.

Subject to the foregoing, the City Council hereby authorizes and directs the City Manager (or the City Manager's designee) to execute, in a form approved by the City Attorney, and the City Clerk to attest, the final form of the Loan Agreement for and in the name of the City. The execution of the Loan Agreement in accordance with this Section shall be conclusive evidence of the approval by an Authorized Officer of any changes or additions to the form of the Loan Agreement on file with the City Clerk. The City Council hereby authorizes the delivery of and performance of the City's obligations under the Loan Agreement.

Section 2. Approval of Related Financing Documents, including Promissory Note. The City Council hereby authorizes and approves the execution by the City Manager (or the City Manager's designee) and delivery of the additional financing documents, certificates and schedules required by, and as described in, the Loan Agreement, together with any changes therein or additions thereto deemed advisable by an Authorized Office, in a form approved by the City Attorney. Execution by the City Manager (or the City Manager's designee) thereof shall be conclusive evidence of the approval of any such changes or additions. The City Manager (or the City Manager's designee) is further authorized and directed to execute and deliver to U.S. EPA a promissory note, evidencing the obligation of the City to U.S. EPA under the Loan Agreement, the form of which is attached as an exhibit to the Loan Agreement.

All of the documents approved under this Section shall be consistent with the terms and conditions set forth in the Loan Agreement, as finally executed and delivered by the City in accordance with this Resolution.

Section 3. Official Actions. The City Manager (or the City Manager’s designee) is hereby 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, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions described herein. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any other action, such execution, countersigning or other action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf if such officer is at the time any execution, countersigning or other action is to be taken absent or unavailable.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2025

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

APPENDIX A

REQUIRED FINANCIAL DISCLOSURES PURSUANT TO GOVERNMENT CODE SECTION 5852.1

1. True Interest Cost (Estimated): 4.54%.
2. Finance charge, being the sum of all fees and charges paid to third parties, in the amount of approximately \$475,000.
3. Proceeds of the Loan Agreement expected to be received by the City, net of proceeds for costs of executing and delivering the Loan Agreement in (2) above, capitalized interest and reserves (if any), from the maximum principal amount of the Loan Agreement (Estimated): \$244,139,000.
4. Total Payment Amount under the Loan Agreement, being the sum of all loan payments to be made by the City under the Loan Agreement to final maturity (Estimated): \$644,433.570.

**All amounts and percentages are estimates, and are made in good faith by the City on March 3, 2025. Estimates include certain assumptions regarding the interest rate to be established under the Loan Agreement.*