

ORDINANCE NO. O22-08

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, (1) AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT, A TRUST AGREEMENT, AN ESCROW AGENT AGREEMENT, A CONTINUING DISCLOSURE UNDERTAKING, A BANK SOLICITOR AGREEMENT AND AN OBLIGATION PURCHASE CONTRACT; (2) APPROVING THE SALE, EXECUTION AND DELIVERY OF WATER AND SEWER REVENUE REFUNDING OBLIGATIONS IN ONE OR MORE SERIES IN ORDER TO REFUND WATER AND SEWER TAX REVENUE OBLIGATIONS PREVIOUSLY DELIVERED TO FINANCE IMPROVEMENTS OF THE CITY'S WATER AND SEWER SYSTEM; (3) PLEDGING CERTAIN WATER AND SEWER SYSTEM REVENUES IMPOSED OR RECEIVED BY THE CITY TO THE PAYMENT OF SUCH OBLIGATIONS; (4) DELEGATING TO AN AUTHORIZED OFFICER OF THE CITY THE LIMITED AUTHORITY TO DESIGNATE BY SERIES THE FINAL PRINCIPAL AMOUNT, MATURITIES, INTEREST RATES AND OTHER MATTERS WITH RESPECT TO SUCH OBLIGATIONS; AND (5) AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE, INCLUDING THE EXECUTION OF CERTAIN DOCUMENTS AND THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT.

WHEREAS, the City executed and delivered a Trust Agreement dated as of February 1, 2012 (the "2012 Trust Agreement") and a Purchase Agreement dated as of February 1, 2012 (the "2012 Purchase Agreement"), pursuant to which Senior Lien Water and Sewer Revenue Refunding Obligations, Series 2012 (the "2012 Obligations"), in an aggregate principal amount of \$77,635,000, evidencing a proportionate interest of the owners of the 2012 Obligations in purchase price payments to be made by the City, were executed and delivered on February 9, 2012; and

WHEREAS, the City executed and delivered a Trust Agreement dated as of March 1, 2015 (the "2015 Trust Agreement") and a Purchase Agreement dated as of March 1, 2015 (the "2015 Purchase Agreement"), pursuant to which Senior Lien Water and Sewer Revenue Refunding Obligations, Series 2015 (the "2015 Obligations"), in an aggregate principal amount of \$121,245,000, evidencing a proportionate interest of the owners of the 2015 Obligations in purchase price payments to be made by the City, were executed and delivered on March 3, 2015; and

WHEREAS, the City executed and delivered a Trust Agreement dated as of December 1, 2020 (the “2020 Trust Agreement”) and a Purchase Agreement dated as of December 1, 2020 (the “Refunding Purchase Agreement”), pursuant to which Subordinate Lien Water and Sewer Revenue Refunding Obligations, Series 2020 (the “2020 Obligations”), in an aggregate principal amount of \$20,250,000, evidencing a proportionate interest of the owners of the 2020 Obligations in purchase price payments to be made by the City, were executed and delivered on December 17, 2020 and

WHEREAS, the City executed and delivered a Trust Agreement dated as of June 1, 2021 (the “2021 Trust Agreement”) and a Purchase Agreement dated as of June 1, 2021 (the “2021 Purchase Agreement”), pursuant to which Subordinate Lien Water and Sewer Revenue Refunding Obligations, Series 2021 (the “2021 Obligations”), in an aggregate principal amount of \$22,720,000, evidencing a proportionate interest of the owners of the 2021 Obligations in purchase price payments to be made by the City, were executed and delivered on June 10, 2021; and

WHEREAS, the 2012 Trust Agreement, the 2015 Trust Agreement, the 2020 Trust Agreement, the 2021 Trust Agreement, the 2012 Purchase Agreement, the 2015 Purchase Agreement, the 2020 Purchase Agreement and the 2021 Purchase Agreement describe the terms and conditions upon which additional water and sewer obligations may be issued; and

WHEREAS, the City proposes to refinance the Refunded Obligations (as defined herein) in order to achieve debt service savings through the issuance of Obligations (as defined herein) evidencing proportionate interests of the owners of such Obligations in payments to be made by the City in the Purchase Agreement (as defined herein); and

WHEREAS, the Obligations will be issued pursuant to the Trust Agreement between the City and the Trustee (as such terms are defined herein); and

WHEREAS, pursuant to the Purchase Agreement, the City will sell to the Trustee its residual rights in the respective properties subject to the applicable purchase agreements after the repayment of the applicable obligations and repurchase such rights from the Trustee (the “Residual Rights”); and

WHEREAS, the Obligations will be secured by amounts received under the Purchase Agreement pursuant to which the City will pledge Net Revenues (as defined herein) on a priority of lien basis determined as provided herein; and

WHEREAS, the Obligations may be sold by negotiated or competitive sale and if appropriate, may be reoffered pursuant to the Preliminary Official Statement and Official Statement (as such terms are defined herein); and

WHEREAS, the Obligations may be sold to a bank financial institution, pursuant to a bank lending proposal, to be selected by the Authorized Officer; and

WHEREAS, there have been placed on file with the City Clerk the proposed forms of the following documents: (i) Purchase Agreement to be dated as of April 1, 2022 or such later date as may be determined pursuant to Section 2 hereof (the “Purchase Agreement”) by and between

the City and the Trustee, (ii) Trust Agreement to be dated as of April 1, 2022 or such later date as may be determined pursuant to Section 2 hereof (the “Trust Agreement”), (iii) continuing disclosure undertaking (the “Continuing Disclosure Undertaking”), if required pursuant to Rule 15c2-12 of the Securities and Exchange Commission, (iv) Bank Solicitor Agreement to be dated as of April 1, 2022 or such later date as may be determined pursuant to Section 2 hereof (the “Bank Solicitor Agreement”), and (v) escrow agent agreement to be dated as of April 1, 2022 or such later date as may be determined pursuant to Section 2 hereof (the “Escrow Agent Agreement”); and

WHEREAS, this Council desires to authorize the execution and delivery of the Purchase Agreement, the Trust Agreement, the Continuing Disclosure Undertaking and the Escrow Agent Agreement (collectively, the “Basic Documents”) and such other documents as may be necessary in connection with the execution and delivery of said Basic Documents, the pledge of Net Revenues for the payment of the amounts due under the Purchase Agreement and the issuance of the Obligations.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. In addition to words and terms elsewhere defined in this Ordinance, the capitalized words and terms used herein shall have the meaning given in Article 1 of the Trust Agreement.

SECTION 2. The sale and purchase of the Residual Rights pursuant to the Purchase Agreement are hereby approved; and the installment purchase payments (the “Purchase Payments”) specified in the Purchase Agreement are hereby approved (but subject to the limitations on the source of City payments as set forth in Section 3). The City Manager, Assistant City Manager or Budget and Finance Director, whether actual, acting or interim (each an “Authorized Officer”) is hereby authorized and directed to execute the Basic Documents on behalf of the City in substantially the form on file with the City Clerk with such modifications, insertions and changes as may be approved by the executing officials, which approval shall be conclusively evidenced by their execution of the Basic Documents. If more than one series of obligations are issued, Basic Documents shall include additional agreements necessary to provide for such series.

SECTION 3. For the payment of the Purchase Payments due and payable under the Purchase Agreement authorized in Section 2 hereof, there are hereby pledged the City’s Net Revenues on a priority of lien basis to be determined as set forth in Section 5 hereof. It is intended that this pledge of Net Revenues will be sufficient to make the Purchase Payments pursuant to the Purchase Agreement and the City agrees and covenants to make said Purchase Payments from such Net Revenues, except to the extent that it chooses to make such payments from other funds, as permitted by law. Neither the Purchase Agreement nor the promise to pay pursuant thereto nor the Obligations constitute a general obligation of the City nor shall the City be liable for the payments under the Purchase Agreement from ad valorem taxes.

SECTION 4. The City Council of the City hereby finds and determines that the refinancing of the Refunded Obligations pursuant to the terms of the Purchase Agreement and the Trust Agreement, through the issuance and the sale of the Obligations, are in furtherance of

the purposes of the City and in the public interest and will enhance the standard of living within the City and within the State.

SECTION 5. The City hereby approves the issuance and delivery of the Water & Sewer Revenue Refunding Obligations, Series 2022 (the “Obligations”) in an aggregate principal amount not to exceed the amount necessary to refund the Refunded Obligations and to pay costs of issuance provided that such refinancing shall result in a present value debt service savings net of all costs associated with the Obligations of at least two and one-half percent (2.5%).

The Obligations shall be in the denomination of \$5,000 or any integral multiple thereof, shall be dated as determined by an Authorized Officer, shall bear interest from such date payable on January 1 and July 1 of each year, commencing as determined by an Authorized Officer, and shall be fully registered bonds without coupons. The Obligations shall mature on July 1 in the years determined by an Authorized Officer but not later than the latest maturity of the Refunded Obligations.

The forms, terms and provisions of the Obligations and the provisions for the signatures, authentication, payment, registration, transfer, exchange and number shall be as set forth in the Trust Agreement and are hereby approved.

An Authorized Officer is hereby authorized and directed to determine on behalf of the City: (i) whether each series of the Obligations are to be issued on a tax-exempt basis (“Tax-Exempt Obligations”) or a taxable basis; (ii) the principal amount of the Obligations; (iii) the final maturity schedule of the Obligations (but no later than July 1, 2028); (iv) the provisions for redemption in advance of maturity or payment of the Obligations; (v) the interest rates on the Obligations; (vi) the sales price and terms of the purchase of the Obligations (including the underwriter’s discount and the original issue discount or premium), (vii) the determination as to which series of Obligations shall be Senior Obligations and which shall be Subordinate Obligations (as defined in the Trust Agreement), (viii) the provisions for credit enhancement, if any, for the Obligations including a debt service reserve fund or surety bond; (ix) the provisions for a capitalized interest or contingency amount, if any, if deemed to be in the best interests of the City; (x) the selection of any or all of the 2012 Obligations to be refunded (the “Refunded Obligations”) and (xi) the identity of the financial institution to serve as trustee under the Trust Agreement (the “Trustee”).

The provisions for redemption of the Obligations shall be as set forth in the Trust Agreement.

The forms and other terms and provisions of the Obligations and the provisions for the signatures, authentication, payment, registration, transfer, exchange, and number shall be as set forth in the Trust Agreement and are hereby approved.

SECTION 6. An Authorized Officer is authorized to (i) prepare, or cause to be prepared, if necessary, a form of Preliminary Official Statement substantially the form used in connection with the 2021 Obligations (the “Preliminary Official Statement”), (ii) determine whether the Obligations are to be sold pursuant to negotiated sale or competitive bid basis either to one or more underwriters as described in the Official Statement or to one or more financial institutions

on a private placement basis or pursuant to a bank lending proposal and (iii) confirm such sale through the execution and delivery of an obligation purchase contract in a form similar to that executed and delivered in connection with the 2021 Obligations in the event of a negotiated sale or, in the event of a competitive bid or bank lending proposal, through execution and delivery of a certificate and receipt. An Authorized Officer is hereby authorized to execute and deliver such agreements in such form with such insertions, omissions and changes as are necessary and consistent with this Ordinance, the execution of such agreements being conclusive evidence of such approval.

SECTION 7. The forms, terms and provisions of the Basic Documents, in substantially the forms of such documents (including the exhibits thereto) on file with the City Clerk, are hereby approved. An Authorized Officer is hereby authorized and directed to execute and deliver, and the City Clerk of the City to attest, if necessary, the Basic Documents, with such insertions, omissions and changes as are necessary and consistent with this Ordinance, the execution of such documents being conclusive evidence of such approval and particularly of approval and acceptance of the covenants contained therein by the City Council of the City on behalf of the City.

SECTION 8. An Authorized Officer is authorized to enter into such agreements as he determines necessary in conjunction with obtaining bond insurance or a reserve fund surety bond, if any and which are necessary to carry out and comply with the terms, provisions, and intent of this Ordinance.

All actions of the City related to preparing and distributing the Preliminary Official Statement are hereby approved and ratified. The portions of the Official Statement regarding the Obligations which concern and describe the City are hereby approved and the City Manager is hereby authorized and directed to execute the same and any required certificates as to the accuracy and completeness of said Official Statement descriptions of the City.

SECTION 9. The Preliminary Official Statement in substantially the form used in connection with the 2021 Obligations is approved and the distribution of the same, if necessary, is hereby approved. The Preliminary Official Statement is “deemed final” (except for permitted omissions), by the City as of its date for purposes of SEC Rule 15c2-12(b)(1) and a final official statement will be prepared and distributed to the Original Purchaser, if necessary, for purposes of SEC Rule 15c2-12(b)(3) and (4). The City Manager is authorized and directed to complete and sign on behalf of the City and in his or her official capacity, the Official Statement, with such modifications, changes and supplements as being necessary to carry out and comply with the terms, provisions, and intent of this Ordinance. The City Manager is authorized to use and distribute, or authorize the use and distribution of, the Official Statement and any supplements thereto as so signed in connection with the original issuance of the Obligations as may in his or her judgment be necessary or appropriate. The references to the City contained in the Preliminary Official Statement and such final Official Statement relating to the Obligations are hereby authorized and approved.

SECTION 10. An Authorized Officer and the Clerk of the City are hereby authorized and directed to do all such acts and things to execute, acknowledge and deliver all such

documents (including, without limitation, tax compliance certificates, security agreements and financing statements, any amendments to such documents and all closing documents) as may in their discretion be deemed necessary or desirable to carry out and comply with the terms, provisions and intent of this Ordinance, and the Basic Documents and all exhibits to any of the foregoing. All of the acts of the officers of the City which are in conformity with the intent and purposes of this Ordinance, whether heretofore or hereafter taken or done, shall be and the same are hereby ratified, confirmed, and approved in all respects.

SECTION 11. In the event any of the Obligations are Tax-Exempt Obligations, the City covenants that it will use, and will restrict the use and investment of, the proceeds of the Tax-Exempt Obligations in such manner and to such extent as may be necessary so that (a) the Obligations will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the "Code"), or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon will not be treated as a preference item under Section 57 of the Code. An Authorized Officer, or any other officer having responsibility for issuance of the Obligations shall, alone or with any other necessary officer or employee or consultant to the City, give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Tax-Exempt Obligations, setting forth (i) the reasonable expectations of the City regarding the amount and use of all the proceeds of the Tax-Exempt Obligations; (ii) the facts, circumstances and estimates on which the City's expectations are based; and (iii) other facts and circumstances relevant to the tax treatment of interest on the Tax-Exempt Obligations.

The City covenants (a) that it will take or cause to be taken such actions which may be required of it for the interest on the Tax-Exempt Obligations to be and remain excluded from gross income for federal income tax purposes, (b) that it will not take or authorize to be taken any actions which would adversely affect that exclusion and (c) that it, or persons acting for it, will, among other acts of compliance; (i) apply the proceeds of the Tax-Exempt Obligations to the governmental purpose of the borrowing; (ii) restrict the yield on investment property; (iii) make timely and adequate payments to the federal government; (iv) maintain books and records and make calculations and reports; and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. An Authorized Officer, and other appropriate city officers are hereby authorized and directed to take any and all such actions, make calculations and rebate payments, and make or give such reports and certifications, as may be appropriate to assure such exclusion of that interest.

SECTION 12. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 13. All orders and Ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order or Ordinance or any part thereof.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 11th day of January, 2022.

Mayor Jerry P. Weiers

ATTEST:

Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

REVIEWED BY:

Kevin R. Phelps, City Manager