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ORDINANCE NUMBER O- 15806 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 13 2008

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO SECTION 99 OF THE CHARTER OF THE CITY OF SAN DIEGO APPROVING THE FORM OF AND AUTHORIZING THE ISSUANCE OF THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO WATER REVENUE BONDS, REFUNDING SERIES 2009A AND SERIES 2009B (PAYABLE SOLELY FROM INSTALLMENT PAYMENTS SECURED BY NET SYSTEM REVENUES OF THE WATER UTILITY FUND OF THE CITY OF SAN DIEGO) AND APPROVING AN INDENTURE AND FIRST SUPPLEMENT THERETO, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED MASTER INSTALLMENT PURCHASE AGREEMENT AND 2009A AND 2009B SUPPLEMENTS THERETO, AND APPROVING 2009A AND 2009B CONTINUING DISCLOSURE CERTIFICATES RELATING TO INSTALLMENT PURCHASE FINANCINGS, AUTHORIZING THE CITY ATTORNEY TO APPOINT BOND COUNSEL AND DISCLOSURE COUNSEL AND APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of San Diego [City] and the Redevelopment Agency of the City of San Diego entered into a Joint Exercise of Powers Agreement 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 [State] that was incorporated to provide financial assistance to the City; and

WHEREAS, the City has caused \$385,000,000 aggregate principal amount of San Diego Facilities and Equipment Leasing Corporation Certificates of Undivided Interest (In Installment

Payments Payable from the Net System Revenues of the Water Utility Fund of the City of San Diego) Series 1998 [1998 Certificates], to be executed and delivered in order to finance the acquisition, construction, installation, and improvement of the City's water system [Water System]; and

WHEREAS, the City has caused \$286,945,000 aggregate principal amount of Public Facilities Financing Authority of the City of San Diego Subordinated Water Revenue Bonds, Series 2002 (Payable Solely From Subordinated Installment Payments Secured By Net System Revenues of the Water Utility Fund) [2002 Subordinated Bonds], to be issued in order to finance further capital improvements to the Water System; and

WHEREAS, the City has caused the Authority to issue \$57,000,000 original principal amount of the Authority's Non-Transferable Subordinated Water Revenue Notes, Series 2007A (Payable Solely from Subordinated Installment Payments Secured By Net System Revenues of the Water Utility Fund) [2007A Notes], the proceeds of which were applied to the further capital improvements of the Water System, all of which are currently outstanding and subject to optional call and prepayment as required by the terms thereof on January 30, 2009; and

WHEREAS, the City has caused the Authority to issue \$150,000,000 aggregate principal amount of the Authority's Subordinated Water Revenue Notes, Series 2008A (Payable Solely from Subordinated Installment Payments Secured by Net System Revenues of the Water Utility Fund) [2008A Notes, and together with the 2007A Notes, Subordinated Notes], the proceeds of which were applied to the further capital improvements of the Water System, all of which are currently outstanding and subject to prepayment as required by the terms thereof no later than August 28, 2009; and

WHEREAS, in order to effectuate the acquisition, construction, installation and improvement of the City's Water System with the proceeds of the 1998 Certificates, the Corporation agreed to sell components of the Water System financed with the proceeds of the 1998 Certificates to the City pursuant to a Master Installment Purchase Agreement, dated as of August 1, 1998, between the Corporation and the City, as subsequently amended and supplemented from time to time [Original Installment Purchase Agreement], the amendments to which have previously been approved by this City Council and consented to by the Credit Providers (as defined in the Original Installment Purchase Agreement); and

WHEREAS, in order to provide for the payment of the 1998 Certificates, the 2002 Subordinated Bonds and the Subordinated Notes, the City and the Corporation did enter into supplements to the Original Installment Purchase Agreement; and

WHEREAS, to consolidate, clarify and update the Original Installment Purchase Agreement, as amended by the First Amendatory Supplement and by the Second Amendatory Supplement, there has been prepared and submitted to this meeting of the City Council an Amended and Restated Master Installment Purchase Agreement, by and between the Corporation and the City [Amended and Restated Master Installment Purchase Agreement, or, following approval and execution, Installment Purchase Agreement]; and

WHEREAS, the City desires to effect the payment or prepayment of the Subordinated Notes and the refunding of all or a portion of the 1998 Certificates [collectively, Refunded Obligations], if economical or otherwise on terms beneficial to the City and its residents; and

WHEREAS, the City desires to effect the further acquisition, construction, installation and improvement of various components of its Water System [2009B Components] in order to meet the requirements of the Department of Public Health of the State; and

WHEREAS, in order to facilitate the payment of the 2007A Notes and the refunding of all or a portion of the outstanding 1998 Certificates [2009A Refunded Obligations], the City and the Corporation propose to enter into a 2009A Supplement to the Installment Purchase Agreement [2009A Supplement], supplementing the Installment Purchase Agreement; and

WHEREAS, in order to provide funding for the 2009B Components and to facilitate the prepayment of the 2008A Notes [2009B Refunded Obligations], the City and the Corporation propose to enter into a 2009B Supplement to the Installment Purchase Agreement [2009B Supplement, and collectively with the 2009A Supplement, the 2009 Supplements], supplementing the Installment Purchase Agreement; and

WHEREAS, section 1.150-2 of the United States Treasury Regulations [Regulations] requires the City to declare its reasonable intent to reimburse certain costs of the 2009B Components [Reimbursable Expenditures] with the proceeds of the 2009B Bonds (as defined below), incurred prior to the date of issuance thereof;

WHEREAS, to further facilitate the proposed financing and refunding, the Corporation, as assignor, will execute a separate Assignment Agreement [each, an Assignment Agreement] respecting the 2009A and the 2009B Supplements, pursuant to which the Corporation will assign all of its right, title and interest in and to the 2009A and the 2009B Supplements, respectively, to the Authority, as assignee; and

WHEREAS, under the Installment Purchase Agreement, the 2009A Supplement and the Assignment Agreement related to the 2009A Supplement [2009A Assignment Agreement], the City will be obligated to make 2009A Installment Payments (as defined in the 2009A Supplement) to the Authority; and

WHEREAS, under the Installment Purchase Agreement, the 2009B Supplement and the Assignment Agreement related to the 2009B Supplement [2009B Assignment Agreement], the City will be obligated to make 2009B Installment Payments (as defined in the 2009B Supplement) to the Authority; and

WHEREAS, to provide funds to pay the 2007A Notes and to refund all or a portion of the 1998 Certificates, to fund a debt service reserve fund, if necessary and advisable, and to pay costs of issuance, the City now desires to request that the Authority issue its Water Revenue Bonds, Refunding Series 2009A (Payable Solely from Installment Payments Secured by Net System Revenues of the Water Utility Fund) [2009A Bonds]; and

WHEREAS, to provide funds to finance and to reimburse the City for the costs of the 2009B Components, to prepay the 2008A Notes, to fund a debt service reserve fund, if necessary and advisable, and to pay costs of issuance, the City now desires to request that the Authority issue its Water Revenue Bonds, Series 2009B (Payable Solely from Installment Payments Secured by Net System Revenues of the Water Utility Fund) [2009B Bonds, and collectively with the 2009A Bonds, 2009 Bonds]; and

WHEREAS, in order to facilitate the sale of the 2009 Bonds and to permit the underwriters of the 2009 Bonds to comply with the provisions of Rule 15c2-12 promulgated by the Securities and Exchange Commission [Rule], the Authority has required that the City execute and deliver a separate Continuing Disclosure Certificate in connection with the 2009A Bonds [2009A Continuing Disclosure Certificate] and with the 2009B Bonds [2009B Continuing Disclosure Certificate]; and

WHEREAS, in order to provide for the authentication and delivery of the 2009 Bonds, to establish and declare the terms and conditions upon which the 2009A Bonds are to be issued and

secured and to secure the repayment thereof, it is proposed that the Authority and the Trustee enter into an Indenture [Indenture] and, to provide details of the 2009B Bonds, it is proposed that the Authority and the Trustee enter into a First Supplement Indenture [First Supplemental Indenture]; and

WHEREAS, the Authority may desire to issue a series of subordinated revenue bonds [collectively, 2009 Subordinated Bonds] in addition to, or in lieu of, either series of the 2009 Bonds and in that event, the City desires to approve the issuance of one or more series of 2009 Subordinated Bonds and the execution of legal documents relating thereto; 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 method of financing the acquisition, construction, installation and improvement of the 2009B Components and the payment, prepayment or refunding of the Refunded Obligations through the issuance by the Authority of the 2009 Bonds in the aggregate principal amount of not to exceed Six Hundred Thirty-Eight Million Dollars (\$638,000,000), in two or more series, and the investment of the proceeds of the 2009 Bonds in accordance with the Indenture, are hereby approved, and specifically, the forms of the Indenture and First Supplemental Indenture submitted to this meeting, copies of which are on file in the office of the City Clerk as Document No. O- 15806⁻¹ and Document No. O- 15806⁻², respectively, are hereby approved. The Chief Operating Officer and the Chief Financial Officer

of the City, and their specified designees, and each of them, are hereby authorized and directed, for and in the name of and on behalf of the City, to be bound by certain provisions of the Indenture and the First Supplemental Indenture with respect to disbursement of moneys in the Acquisition Fund (as defined in the Indenture), and the City Clerk is authorized to attest thereto, with such additions and changes therein as the Chief Operating Officer or the Chief Financial Officer of the City, or their specified designees shall approve as being in the best interests of the City, and as approved as to form by the City Attorney or his specified designee, and with such other changes that may be required by Fulbright & Jaworski L.L.P., Bond Counsel [Bond Counsel], such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The form, terms and provisions of the Amended and Restated Master Installment Purchase Agreement, between the City and the Corporation, a copy of which is on file in the office of the City Clerk as Document No. O- 15806⁻³ and submitted to this meeting, are hereby approved. The Chief Operating Officer and the Chief Financial Officer of the City and their specified designees, and each of them, are hereby authorized and directed, for an in the name and on behalf of the City, to execute and deliver the Amended and Restated Master Installment Purchase Agreement in substantially the form submitted to this meeting, and the City Clerk is authorized to attest thereto, with such additions and changes therein as the Chief Operating Officer or the Chief Financial Officer shall approve as being in the best interests of the City, and approved as to form by the City Attorney or his 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 4. The form, terms and provisions of the 2009A Supplement and the 2009B Supplement, each between the City and the Corporation, copies of which are on file in the office

of the City Clerk as Document No. O - 15806⁻⁴ and Document No. O - 15806⁻⁵ respectively, and submitted to this meeting, are hereby approved. The Chief Operating Officer and the Chief Financial Officer of the City and their specified designees, and each of them, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the 2009A Supplement and the 2009B Supplement in substantially the forms submitted to this meeting, and the City Clerk is authorized to attest thereto, with such additions and changes therein as the Chief Operating Officer or the Chief Financial Officer shall approve as being in the best interests of the City, and as approved as to form by the City Attorney or his 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; provided, however, that the aggregate amount of 2009A Installment Payments (as defined in the 2009A Supplement), attributable to principal shall not exceed Three Hundred Nine Million Dollars (\$309,000,000), the proceeds of which shall be applied to the payment of the 2007A Notes and the refunding of some or all of the outstanding 1998 Certificates, and the aggregate amount of 2009B Installment Payments (as defined in the 2009B Supplement) attributable to principal shall not exceed Three Hundred Twenty-Nine Million Dollars (\$329,000,000), the proceeds of which shall be applied to the construction, acquisition and installation of the 2009B Components and the prepayment of the 2008A Notes, for a combined total of not to exceed Six Hundred Thirty-Eight Million Dollars (\$638,000,000), and the 2009A and the 2009B Installment Payments shall be payable semiannually or otherwise as the Chief Operating Officer or the Chief Financial Officer of the City or as their specified designees, or any of them, may direct for a period of not more than thirty (30) years from the respective dates of issuance of the 2009A Bonds or the 2009B Bonds, respectively, and with respect to payments by the City of the amount of 2009A Installment

Payments or 2009B Installment Payments attributable to interest, the true interest cost, including costs of issuance, shall not exceed a per annum fixed rate of 10.0%, with the true interest cost, including costs of issuance, for the 2009 Bonds attributable to the refunding of the 1998 Certificates to be established at or below the per annum fixed rate of 4.85%, and the Chief Operating Officer or the Chief Financial Officer of the City or their specified designees, and each of them, are hereby authorized and directed to approve provisions for the prepayment of the 2009A Installment Payments and the 2009B Installment Payments, which may differ from one another. Notwithstanding the foregoing, the maximum principal amount of the 2009B Bonds may be increased by any portion of the maximum principal amount herein authorized for the 2009A Bonds which remains unissued after the date of delivery of the 2009A Bonds, due to the City's inability to refund certain maturities of the 1998 Certificates, so long as the combined principal amount of the 2009 Bonds does not exceed Six Hundred Thirty-Eight Million Dollars (\$638,000,000). The Chief Operating Officer or the Chief Financial Officer of the City or their specified designees shall, in consultation with the financial advisors to the City, determine whether the 2009A Installment Payments and the 2009A Bonds shall be issued as Subordinated Obligations or as Parity Obligations of the Water System, or whether the 2009B Installment Payments and the 2009B Bonds shall be issued as Subordinated Obligations or as Parity Obligations of the Water System, or a combination thereof, in accordance with the terms of the Installment Purchase Agreement, taking into consideration market conditions at the time of the offering and the best interests of the City. The 2009B Bonds shall be issued on or before June 30, 2009; in the event the 2009B Bonds are not in fact issued by that date, further action by this City Council shall be required for their later issuance. The Chief Operating Officer and the Chief Financial Officer, or their specified designees, are each further authorized, in accordance

with the terms and provisions of Section 3.02 of the Installment Purchase Agreement, to modify or amend from time to time the description of the 2009B Components of the Project set forth in Exhibit A to the 2009B Supplement to reduce or eliminate any portion thereof or to substitute 2009B Components to be financed with proceeds of the 2009B Bonds.

Section 5. The City hereby acknowledges that the obligation of the City to make 2009 Installment Payments to the Authority, in accordance with the 2009A Supplement, the 2009B Supplement and the respective Assignment Agreements, copies of which are on file in the Office of the City Clerk as Documents No. O- 15806-6, and No. O- 15806-7, shall be a limited obligation of the City payable solely from Net System Revenues (as those terms are defined in the Installment Purchase Agreement) and other funds provided for under the 2009A Supplement, the 2009B Supplement, the Indenture and the First 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. In accordance with the Assignment Agreements, the assignment by the Corporation of the City's obligations under the 2009 Supplements to the Authority is hereby approved.

Section 6. The Chief Operating Officer and the Chief Financial Officer of the City and their specified designees, and each of them, are hereby authorized and directed to take all actions and execute any and all documents necessary or advisable to provide for the payment or prepayment of the Subordinated Notes and the refunding of all or a portion of the 1998 Certificates with proceeds of the 2009 Bonds, if such refunding or any portion thereof is determined to be in the best interests of the City in accordance with the current City Council Debt Policy.

Section 7. The Chief Operating Officer and the Chief Financial Officer of the City and their specified designees, and each of them, are hereby authorized and directed to take all actions and execute any and all documents necessary or advisable to arrange for the insuring of all or a portion of the 2009 Bonds or the 2009 Subordinated Bonds, to fund a debt service reserve fund or to purchase a reserve surety bond for the 2009 Bonds or the 2009 Subordinated Bonds, or to obtain any other form of credit enhancement for the 2009 Bonds or the 2009 Subordinated Bonds, if, upon the advice of the City's financial advisors, such insurance, reserves, surety bond or other credit enhancement is expected to result in a lower true interest cost of the 2009 Bonds or the 2009 Subordinated Bonds, or to elect to proceed without reserves or credit enhancement, if otherwise beneficial to the City.

Section 8. In connection with the public offering of the 2009 Bonds and/or the 2009 Subordinated Bonds, the Chief Operating Officer and the Chief Financial Officer of the City, and their specified designees, and each of them, acting alone, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the 2009A Continuing Disclosure Certificate, a copy of which is on file in the office of the City Clerk as Document No. O- 15806 - 8 and the 2009B Continuing Disclosure Certificate, a copy of which is on file in the office of the City Clerk as Document No. O- 15806 - 9, each as submitted to this meeting, with such additions and changes therein as the Chief Operating Officer and the Chief Financial Officer, or their specified designees, shall approve as being in the best interests of the City, and as approved as to form by the City Attorney, or his specified designee, and with such other changes as are required by Disclosure Counsel to the City (as defined in Section 10 below), such approval to be conclusively evidenced by the execution and delivery thereof.

Section 9. The City hereby authorizes the City Attorney to appoint Fulbright & Jaworski L.L.P. as Bond Counsel for the City in connection with the issuance of the 2009A Bonds and/or the 2009A Subordinated Bonds. The City Attorney or his specified designee is further authorized to pay the fees and expenses of Fulbright & Jaworski L.L.P., as Bond Counsel, in an amount estimated at \$175,000, in addition to an amount not to exceed \$5,000 for reasonable out-of-pocket expenses; and as Counsel to the Corporation, an amount estimated at \$15,000, in addition to an amount not to exceed \$1,000 for reasonable out-of-pocket expenses.

Section 10. The City hereby authorizes the City Attorney to appoint Hawkins Delafield & Wood LLP as Disclosure Counsel for the City in connection with the issuance of the 2009A Bonds or the 2009A Subordinated Bonds. The City Attorney or his specified designee is further authorized to pay the fees and expenses of Hawkins Delafield & Wood LLP, in an amount estimated at \$250,000, in addition to an amount not to exceed \$5,000 for reasonable out-of-pocket expenses.

Section 11. All actions heretofore taken by any officials, employees or agents of the City with respect to the issuance, delivery or sale of the 2009 Bonds or the 2009 Subordinated Bonds, or in connection with or related to any of the agreements referenced herein or the financing of the 2009B Components, the payment or prepayment of the Subordinated Notes or the refunding of all or a portion of the 1998 Certificates, are hereby approved, confirmed and ratified; and such other officials, employees and agents of the City as may be authorized by the Chief Operating Officer or the Chief Financial Officer of the City are 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 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

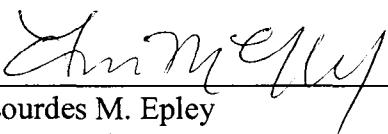
issuance and delivery of the 2009 Bonds or the 2009 Subordinated Bonds and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 12. The City Clerk or his specified designee is hereby authorized and directed to cause a notice of the public hearing concerning the matters set forth in this Ordinance to be published in the *San Diego Daily Transcript* not less than 10 days nor more than 30 days in advance of the hearing.

Section 13. That a full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 14. That this Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Lourdes M. Epley
Deputy City Attorney

LME:jdf
10/01/2008
10/28/2008.COR.Copy
Or.Dept:Debt Mgmt.
O-2009-48

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 10 2008.

ELIZABETH S. MALAND
City Clerk

By *Sara Richards*
Deputy City Clerk

Approved: 11.13.08
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor