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ORDINANCE NUMBER O- 19951 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 06 2010

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 FORMS OF SUPPLEMENTAL INDENTURES, ESCROW AGREEMENTS, AND ASSIGNMENT AGREEMENTS; APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUPPLEMENTS TO THE AMENDED AND RESTATED MASTER INSTALLMENT PURCHASE AGREEMENT AND CONTINUING DISCLOSURE CERTIFICATES; APPROVING AND AUTHORIZING THE ISSUANCE AND SALE BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO OF ITS WATER REVENUE REFUNDING BONDS IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$353,000,000 TO REFUND ALL OR A PORTION OF EXISTING PARITY AND SUBORDINATE OBLIGATIONS TO ACHIEVE SAVINGS; AND APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

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, 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, 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, California) 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, in order to effectuate the acquisition, construction, installation, and improvement of the 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, by and 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 and the 2002 Subordinated Bonds, the City and the Corporation entered into supplements to the Original Installment Purchase Agreement; and

WHEREAS, to consolidate, clarify, and update the Original Installment Purchase Agreement, as amended and supplemented, the City and the Corporation entered into an Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2009, by and between the Corporation and the City [Installment Purchase Agreement], as subsequently supplemented from time to time; and

WHEREAS, from time to time there exist interest rate environments that create savings opportunities through the prepayment of all or a portion of the outstanding 1998 Certificates and the refunding of all or a portion of the outstanding 2002 Subordinated Bonds eligible to be advance refunded; and

WHEREAS, the City desires to effect, from time to time between now and June 30, 2011, the prepayment, on a current refunding basis, of all or a portion of the outstanding 1998 Certificates [Refunded 1998 Certificates] and the refunding, on an advance refunding basis, of all or a portion of the outstanding 2002 Subordinated Bonds eligible to be advance refunded [Refunded 2002 Subordinated Bonds], through the issuance by the Authority of one or more series of Water Revenue Refunding Bonds [Water Refunding Bonds] as opportunities are presented to lower financing costs, if economical or otherwise on terms beneficial to the City and its residents; and

WHEREAS, in connection with the refunding of certain of the Refunded 2002 Subordinated Bonds it may be necessary to place a portion of the proceeds of one or more series of Water Refunding Bonds into escrow until such time as such Refunded 2002 Subordinated Bonds can be called for redemption; and

WHEREAS, to provide for the payment of Water Refunding Bonds 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, this City Council finds it prudent to be ready to act quickly to prepay the Refunded 1998 Certificates or refund the Refunded 2002 Subordinated Bonds at such times as the interest rate market will provide savings by approving at this time the necessary documents and the issuance of one or more series of Water Refunding Bonds; and

WHEREAS, there has been presented to this meeting the following documents relating to the issuance of Water Refunding 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 of the City [City Clerk] as Document No. O- **19951**⁻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- **19951**⁻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 Refunding Bonds; and

c. a proposed form of Supplemental Indenture [Supplemental Indenture], by and between the Authority and the bond trustee named therein, a copy of which Supplemental Indenture is on file in the office of the City Clerk as Document No. O- **19951**⁻³ under which Supplemental Indenture the Authority will issue its Water Refunding Bonds; and

d. a proposed form of Escrow Agreement [Escrow Agreement], by and between the Authority and Wells Fargo Bank, National Association, as trustee for the 2002 Subordinated Bonds and as escrow agent [Escrow Agent], a copy of which Escrow Agreement is on file in the office of the City Clerk as Document No. O- **19951**⁻⁴ under which Escrow Agreement the proceeds of Water Refunding Bonds may be held pending the redemption of Refunded 2002 Subordinated Bonds; and

e. 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- 19951⁵, 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 Water Refunding Bonds; 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 Council hereby finds that it is in the best interests of the City, to prepay, between now and June 30, 2011, the Refunded 1998 Certificates and to refund, on an advance refunding basis, between now and June 30, 2011, the Refunded 2002 Subordinated Bonds through one or more issuances by the Authority of one or more series of Water Refunding Bonds pursuant to one or more Supplemental Indentures, which Water Refunding Bonds will be payable from installment payments made by the City in accordance with one or more Supplements; provided, however, that the advance refunding of all or a portion of the Refunded 2002 Subordinated Bonds shall be effected through the issuance and sale of the Water Refunding Bonds so long as such refunding demonstrates net present value debt service savings of no less than four percent (4.0%) of the principal amount of such portion of Refunded 2002 Subordinated Bonds, and that the prepayment, on a current refunding basis, of all or a portion of the Refunded 1998 Certificates shall be effected through the issuance and sale of Water Refunding Bonds so long as

such prepayment occurs within ninety (90) days of the issuance of such Water Refunding Bonds and demonstrates net present value debt service savings of no less than three percent (3.0%) of the principal amount of such portion of Refunded 1998 Certificates.

Section 3. The City hereby authorizes and approves, and requests that the Authority authorize and approve, the prepayment, between now and June 30, 2011, of all or a portion of the Refunded 1998 Certificates and the refunding, on an advance refunding basis, between now and June 30, 2011, all or a portion of the Refunded 2002 Subordinated Bonds through one or more issuances by the Authority of one or more series of Water Refunding Bonds in the aggregate principal amount of not to exceed Three Hundred Fifty-Three Million Dollars (\$353,000,000) by public offering between now and June 30, 2011, provided that: (i) the final maturity of the Water Refunding Bonds shall be not later than the final maturity of the refunded bonds plus one year; (ii) the applicable net present value debt service savings described in Section 2 hereof shall be satisfied with respect to the refunded bonds; (iii) there shall first be presented to the Disclosure Practices Working Group and this City Council for approval a form of preliminary official statement; and (iv) such Water Refunding Bonds shall be issued on or before June 30, 2011.

Section 4. 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- ^{- 3} **19951** 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], acting alone, are hereby authorized and directed, for and in the name of 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 to be bound by certain provisions of the Supplemental Indenture, and the Authority is hereby requested to execute and deliver the Supplemental Indenture, in conjunction with one or more issuances of Water Refunding Bonds in

one or more series, in substantially the form presented to this meeting, with such additions and changes therein, including a determination of whether the Water Refunding Bonds shall be issued on a senior or subordinate basis, as any Authorized Signatory 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 Goodwin Procter LLP, Bond Counsel [Bond Counsel], such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. 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- 19951⁻¹ and submitted to this meeting, is hereby approved. Any Authorized Signatory, acting alone, is hereby authorized and directed, for and in the name of 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 Refunding Bonds in one or more series, substantially in the form submitted to this meeting, and the City Clerk is authorized to attest thereto, with such additions and changes therein, including a determination of whether the obligations of the City created thereunder shall be on a senior or subordinate basis, as any Authorized Signatory 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.

Section 6. 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- 19951⁻² and the assignment by the Corporation of the City's obligations under the Supplement to the Authority, is hereby approved. Any Authorized Signatory, acting alone, is hereby authorized and directed, for and in the name of 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 of the Authority and the Corporation is hereby requested to execute and deliver the Assignment Agreement, in conjunction with one or more issuances of Water Refunding Bonds in one or more series, in substantially the form presented to this meeting, with such additions and changes therein, as any Authorized Signatory 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.

Section 7. 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 such term is 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 8. Any Authorized Signatory, acting alone, is 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 Water Refunding Bonds, to fund a debt service reserve fund or to purchase a reserve surety bond for the Water Refunding Bonds, or to obtain any other form of credit enhancement for the Water Refunding 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 Water Refunding Bonds, or to elect to proceed without reserves or credit enhancement, if otherwise beneficial to the City.

Section 9. 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- 19951⁻⁵ and submitted to this meeting, is hereby approved. In connection with the public offering of any series of Water Refunding Bonds, any Authorized Signatory, acting alone, is hereby authorized and directed, for and in the name of 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 and changes therein as any Authorized Signatory 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 Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 10. The form and content of the form of Escrow Agreement, by and between the Authority and the escrow agent named therein, a copy of which Escrow Agreement is on file in the Office of the City Clerk as Document No. O- 19951⁻⁴ and submitted to this meeting, is hereby approved, and the Authority is hereby requested to execute and deliver the Escrow Agreement, in conjunction with one or more issuances of Water Refunding Bonds in one or more series, in substantially the form presented to this meeting, with such additions and changes therein as any Authorized Signatory 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.

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 Water Refunding Bonds, or in connection with or related to any of the agreements referenced herein or the prepayment of the Refunded 1998 Certificates or the refunding of the Refunded 2002 Subordinated Bonds, are hereby approved,

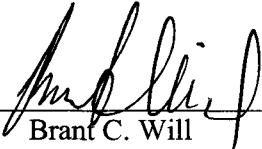
confirmed, and ratified; and such other officials, employees, and agents of the City as may be authorized by any Authorized Signatory are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any 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 Refunding Bonds and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 12. This Ordinance is subject to the provisions of the San Diego Municipal Code and the San Diego City Charter. Subject to those provisions, this Ordinance shall take effect and be in force thirty (30) days from and after the date of its adoption and, prior to the expiration of fifteen (15) days from the passage hereof, the City Clerk or her specified designee shall cause this Ordinance to be published at least once in the San Diego Daily Transcript, a newspaper of general circulation, published and circulated in the City.

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

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

APPROVED: JAN I. GOLDSMITH, City Attorney

By:  _____
Brant C. Will
Deputy City Attorney

BCW:jdf
03/22/2010
Or.Dept: Debt Mgmt.
O-2010-86

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of ~~_____~~ 2010.
MAY 04 2010

ELIZABETH S. MALAND
City Clerk

By: 
Deputy City Clerk

Approved: 5.6.10
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor