

ORDINANCE NUMBER O- 20142 (NEW SERIES)

DATE OF FINAL PASSAGE FEB 22 2012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO SECTION 99 OF THE CHARTER OF THE CITY OF SAN DIEGO APPROVING THE FORM OF SUPPLEMENTAL INDENTURE, ESCROW AGREEMENT, AND ASSIGNMENT AGREEMENT; APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUPPLEMENT TO THE AMENDED AND RESTATED MASTER INSTALLMENT PURCHASE AGREEMENT, BOND PURCHASE AGREEMENT AND CONTINUING DISCLOSURE CERTIFICATE; APPROVING AND AUTHORIZING THE ISSUANCE AND SALE BY THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO OF ITS SUBORDINATED WATER REVENUE REFUNDING BONDS IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$218,000,000 TO REFUND ALL OR A PORTION OF THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, SUBORDINATED WATER REVENUE BONDS, SERIES 2002 TO ACHIEVE SAVINGS; AND APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, The City of San Diego, California [City], 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, in order to effectuate the acquisition, construction, installation, and improvement of the City's water system [Water System], the City caused the execution and delivery 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 evidencing an aggregate principal amount of \$385,000,000 [1998 Certificates], and 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, to refund a portion of the 1998 Certificates (the entirety of which 1998 Certificates have since been prepaid and refunded) and to finance the acquisition, construction and installation of additional improvements to the Water System, the Authority issued \$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]; 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 refunding of all or a portion of the outstanding 2002 Subordinated Bonds; and

WHEREAS, the City desires to effect, from time to time between the date hereof and June 30, 2013, the refunding, on a current refunding basis, of all or a portion of the outstanding 2002 Subordinated Bonds [Refunded 2002 Subordinated Bonds], through the issuance by the Authority of one or more series of Subordinated Water Revenue Refunding Bonds [Subordinated 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 Subordinated 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 Subordinated Water Refunding Bonds the City and the Corporation, will provide for subordinated 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 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 Subordinated Water Refunding Bonds; 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 Subordinated Water Refunding Bonds [Preliminary Official Statement] in accordance with the applicable Disclosure Controls and Procedures; and

WHEREAS, there has been presented to this meeting the following documents relating to the issuance of the Subordinated 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- 20142⁻¹ supplementing the Installment Purchase Agreement, under which Supplement the City will make subordinated 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- 20142⁻² 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 Subordinated 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- 20142⁻³ under which Supplemental Indenture the Authority will issue its Subordinated 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, a copy of which Escrow Agreement is on file in the office of the City Clerk as Document No. O- 20142⁻⁴ under which Escrow Agreement the proceeds of Subordinated Water Refunding Bonds may be held pending the redemption of Refunded 2002 Subordinated Bonds; and

e. A proposed form of Bond Purchase Agreement [Bond Purchase Agreement], by and among Morgan Stanley & Co. LLC for itself, and as representative [Representative] of, E. J. De La Rosa & Co., Inc., RBC Capital Markets, LLC and Stone & Youngberg, A Division of Stifel Nicolaus and such other or alternative underwriters as may be designated by the City [collectively, with the Representative, the Underwriters], the Authority and the City, a copy of which, Bond Purchase Agreement is on file in the office of the City Clerk as Document No. O- 20142⁻⁵ pursuant to which Bond Purchase Agreement the Authority will agree to sell the Subordinated Water Refunding Bonds; and

f. 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- 20142⁻⁶ 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 Subordinated Water Refunding Bonds (the documents described in paragraphs a. through f. are collectively referred to as the “Financing Documents”); and

WHEREAS, a notice of public hearing concerning the adoption of this Ordinance was duly published once at least 10 days prior to such hearing in a newspaper of general circulation in the City; 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 refund, on a current refunding basis, between the date hereof and June 30, 2013, the Refunded 2002 Subordinated Bonds through one or more issuances by the Authority of one or more series of Subordinated Water Refunding Bonds pursuant to one or more Supplemental Indentures, which Subordinated Water Refunding Bonds will be payable from subordinated installment

payments made by the City in accordance with one or more Supplements; and that the refunding of all or a portion of the Refunded 2002 Subordinated Bonds shall be effected through the issuance and sale of the Subordinated Water Refunding Bonds, so long as such redemption occurs within ninety (90) days of the issuance of such 2012A Bonds and such refunding demonstrates net present value debt service savings of no less than three percent (3.0%) of the principal amount of such portion of Refunded 2002 Subordinated Bonds, which principal denomination will be conclusively evidenced by the execution by the City of the Bond Purchase Agreement.

Section 3. The City hereby authorizes and approves, and requests that the Authority authorize and approve, the refunding, on a current refunding basis, between the date hereof and June 30, 2013, all or a portion of the Refunded 2002 Subordinated Bonds through one or more issuances by the Authority of one or more series of Subordinated Water Refunding Bonds in the aggregate principal amount of not to exceed Two Hundred Eighteen Million Dollars (\$218,000,000) by public offering between the date hereof and June 30, 2013, provided that: (i) the final maturity of the Subordinated Water Refunding Bonds shall be not later than the final maturity of the refunded bonds; (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 Subordinated Water Refunding Bonds shall be issued by June 30, 2013.

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- 20142⁻³, 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 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 Subordinated 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 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 his specified designee, and with such other changes that may be required by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the City [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- 20142 - 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 Subordinated 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 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 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- 20142⁻², and the assignment by the Corporation of the City's obligations under the 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 of the Authority and the Corporation is hereby requested to execute and deliver the Assignment Agreement, in conjunction with one or more issuances of Subordinated 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 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 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 subordinated 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 8. The anticipated source of revenues for payment of the Subordinated Water Refunding Bonds is the 2012A 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 2012A Subordinated Installment Payments is subordinate to, and such payment may only be made after the satisfaction on an annual basis of, the Parity Obligations (as defined in the Installment Purchase Agreement) and are on a parity with the payment of certain Subordinated Obligations (as defined in the Installment Purchase Agreement).

Section 9. The form and content of the form of Bond Purchase Agreement submitted to this meeting, a copy of which Bond Purchase Agreement is on file in the office of the City Clerk as Document No. O- 20142⁻⁵, is hereby approved. In connection with any negotiated sale of any series of Subordinated Water Refunding Bonds, each Authorized Signatory is 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 forms of the Bond Purchase Agreement, and the Authority is hereby requested to execute and deliver one or more forms of the Bond Purchase Agreement, in conjunction with one or more issuances of Subordinated 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 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 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 10. 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 arrange for the insuring of all or a portion of the Subordinated Water Refunding Bonds, to fund a debt service reserve fund or to purchase a reserve surety bond for the Subordinated Water Refunding Bonds, or to obtain any other form of credit enhancement for the Subordinated 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 Subordinated Water Refunding Bonds, or to elect to proceed without reserves or credit enhancement, if otherwise beneficial to the City.

Section 11. 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- 20142⁻⁶ and submitted to this meeting, is hereby approved. In connection with the public offering of any series of Subordinated Water Refunding 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 and changes 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 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 12. The form and content of the form of Escrow Agreement, by and between the Authority and Wells Fargo Bank, National Association, as trustee for the 2002 Subordinated Bonds or such other escrow agent to be named therein, a copy of which Escrow Agreement is on file in the Office of the City Clerk as Document No. O- 20142⁻⁴ 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 Subordinated 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 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 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 13. All actions heretofore taken by any officials, employees, or agents of the City with respect to the issuance, delivery, or sale of the Subordinated Water Refunding Bonds, or in connection with or related to any of the agreements referenced herein or the refunding of the Refunded 2002 Subordinated Bonds, are hereby approved, confirmed, and ratified. 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 Subordinated Water Refunding Bonds and the Financing Documents and other documents authorized by this

Ordinance, the transactions authorized hereby and evidenced by the Financing Documents and the disbursement of proceeds thereof in accordance with this Ordinance.

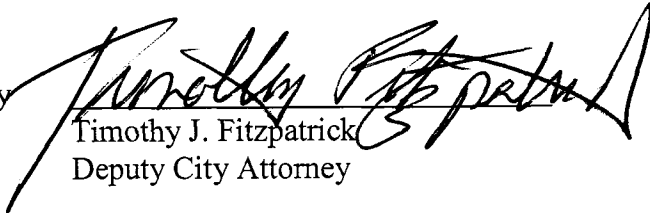
Section 14. In addition, any Authorized Signatory, in consultation with the Chief Financial Officer, is hereby specifically authorized to approve additions and changes to the forms of Financing Documents and the other documents authorized by this Ordinance, which additions and changes the Chief Financial Officer shall believe, with the advice of the City's Financial Advisor for the Subordinated Water Refunding Bonds in connection with financial matters, including sale of the bonds, to be necessary or desirable and in the best interests of the City in light of market conditions, such determination shall be conclusively evidenced by the execution and delivery of such Financing Documents and other documents by any authorized representative of the City, and provided further that such changes on additions are consistent with limitations in Sections 2 and 3 herein.

Section 15. 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 16. A full reading of this Ordinance is dispensed with prior to its passage, a written or printed copy having been available to this City Council and the public a day prior to its passage.

Section 17. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

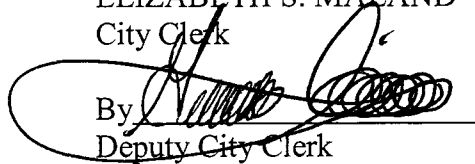
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Timothy J. Fitzpatrick
Deputy City Attorney

TJF:sc
1/9/2012
Or.Dept:Debt Management
Doc.No.: 300608

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of FEB 14 2012.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 2.22.12
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor