

ORDINANCE NUMBER O- 18375 (NEW SERIES)

ADOPTED ON JAN 14 1997

AN ORDINANCE PURSUANT TO SECTION 99 OF THE CHARTER OF THE CITY OF SAN DIEGO APPROVING THE FORM OF A THIRD SUPPLEMENTAL INDENTURE AND APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A 1997-1 SUPPLEMENT TO THE MASTER INSTALLMENT PURCHASE AGREEMENT RELATING TO AN INSTALLMENT PURCHASE FINANCING AND APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of San Diego (the "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 (the "Authority"), a joint exercise of powers entity organized and existing under the laws of the State of California, for the purpose, among others, of having the Authority issue its bonds to be used to finance the acquisition, construction, installation and improvement of the City's wastewater system (the "Project"); and

WHEREAS, the City desires to acquire, construct, install and improve, or cause the acquisition, construction, installation and improvement of, the Project; and

WHEREAS, in order to effect such acquisition, construction, installation and improvement of the Project, the City and the Authority have entered into a Master Installment Purchase Agreement dated as of September 1, 1993 (the "Installment Purchase Agreement"), a 1993-1 Supplement to the Installment Purchase Agreement relating to the Authority's Sewer Revenue Bonds, Series 1993 (Payable Solely from Installment Payments Secured by Wastewater System Net Revenues) (the "1993 Bonds"), and a 1995-1 Supplement to the Installment Purchase Agreement relating to the Authority's Sewer Revenue Bonds, Series 1995 (Payable Solely from

Installment Payments Secured by Wastewater System Net Revenues) (the "1995 Bonds"), pursuant to which the Authority has sold certain components of the Project to the City; and

WHEREAS, in order to effect the acquisition, construction, installation and improvement of additional components of the Project, it is proposed that the City and the Authority enter into a 1997-1 Supplement to the Master Installment Purchase Agreement (the "1997-1 Supplement"), pursuant to which the Authority will sell certain components of the Project to the City; and

WHEREAS, under the Installment Purchase Agreement and the 1997-1 Supplement, the City is obligated to make installment payments to the Authority for the purchase of certain components of the Project; and

WHEREAS, to provide funds for the purchase of certain components of the Project, and in order that such components may be sold to the City pursuant to the Installment Purchase Agreement and the 1997-1 Supplement, the Authority desires to issue its Sewer Revenue Bonds, Series 1997-A and Series 1997-B (Payable Solely from Installment Payments Secured by Wastewater System Net Revenues) (collectively the "1997 Bonds"); and

WHEREAS, in order to provide for the authentication and delivery of the 1993 Bonds, the 1995 Bonds and any additional bonds (the 1993 Bonds, the 1995 Bonds and any additional bonds being collectively referred to herein as the "Bonds"), to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof, premium, if any, and interest thereon, the Authority and State Street Bank and Trust Company of California, N.A. (the "Trustee") have entered into an Indenture, dated as of September 15, 1993, as supplemented by the First Supplemental Indenture, dated as of May 1, 1994, and the Second Supplemental Indenture, dated as of December 1, 1995 (collectively, the "Prior Indentures"); and

Installment Payments Secured by Wastewater System Net Revenues) (the "1995 Bonds"), pursuant to which the Authority has sold certain components of the Project to the City; and

WHEREAS, in order to effect the acquisition, construction, installation and improvement of additional components of the Project, it is proposed that the City and the Authority enter into a 1997-1 Supplement to the Master Installment Purchase Agreement (the "1997-1 Supplement"), pursuant to which the Authority will sell certain components of the Project to the City; and

WHEREAS, under the Installment Purchase Agreement and the 1997-1 Supplement, the City is obligated to make installment payments to the Authority for the purchase of certain components of the Project; and

WHEREAS, to provide funds for the purchase of certain components of the Project, and in order that such components may be sold to the City pursuant to the Installment Purchase Agreement and the 1997-1 Supplement, the Authority desires to issue its Sewer Revenue Bonds, Series 1997 (Payable Solely from Installment Payments Secured by Wastewater System Net Revenues) (the "1997 Bonds"); and

WHEREAS, in order to provide for the authentication and delivery of the 1993 Bonds, the 1995 Bonds and any additional bonds (the 1993 Bonds, the 1995 Bonds and any additional bonds being collectively referred to herein as the "Bonds"), to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof, premium, if any, and interest thereon, the Authority and State Street Bank and Trust Company of California, N.A. (the "Trustee") have entered into an Indenture, dated as of September 15, 1993, as supplemented by the First Supplemental Indenture, dated as of May 1, 1994, and the Second Supplemental Indenture, dated as of December 1, 1995 (collectively, the "Prior Indentures"); and

WHEREAS, in order to provide for the authentication and delivery of the 1997 Bonds, it is proposed that the Authority and the Trustee enter into a Third Supplemental Indenture (the "Third Supplemental Indenture"), amending and supplementing the Indenture (the Prior Indentures, as amended and supplemented by the Third Supplemental Indenture is referred to as the "Indenture"); and

WHEREAS, the Authority desires to sell the 1997 Bonds by negotiated sale to Smith Barney, as representative of a group of underwriters (the "Underwriters"); and

WHEREAS to facilitate compliance by the Underwriters with the provisions of Rule 15c2-12 of the Securities and Exchange Commission in connection with their purchase and resale of the 1997 Bonds, it is proposed that the City, the Authority and the Trustee enter into a Continuing Disclosure Agreement (as defined below); and

WHEREAS, the City is authorized to undertake all of the above pursuant to its Charter and the Constitution and other applicable laws of the State of California, NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City, 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 additional components of the Project through the issuance by the Authority of the 1997 Bonds in an amount of not to exceed three hundred million dollars (\$300,000,000), substantially in accordance with the Indenture, is hereby approved and specifically, the form of the Third Supplemental Indenture submitted to this meeting, a copy of which is on file in the Office of the City Clerk as Document No. 00-18375-1, is hereby approved. The City Manager of the City and his specified designees and each of them, are hereby authorized and

directed, for and in the name of and on behalf of the City, to execute and deliver an agreement, in substantially the form presented to this meeting, to be bound by the provisions of the Indenture relating to the 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 to such provisions of the Indenture as the City Manager shall approve as being in the best interests of the City and as approved to form by the City Attorney or his specified designee and with such other changes that may be required by Orrick, Herrington & Sutcliffe, LLP and Lofton, De Lancie & Nelson, as Co-Bond Counsel ("Co-Bond Counsel"), such approval to be conclusively evidenced by such officer's execution and delivery thereof.

SECTION 3. The form, terms and provisions of the 1997-1 Supplement by and between the City and the Authority, a copy of which is on file in the Office of the City Clerk as Document No. 0-18375-2, and submitted to this meeting, is hereby approved. The City Manager of the City and his 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 1997-1 Supplement 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 City Manager shall approve as being in the best interests of the City, and as approved to form by the City Attorney or his specified designee and with such other changes that may be required by Orrick, Herrington & Sutcliffe, LLP and Lofton, De Lancie & Nelson, as Co-Bond Counsel ("Co-Bond Counsel"), such approval to be conclusively evidenced by such officer's execution and delivery thereof; provided however, that the aggregate amount of Component Installment Payments (as defined in the 1997-1 Supplement) attributable to principal shall not exceed three hundred million dollars (\$300,000,000) of long-term financing and the Component Installment Payments shall be payable semi-annually or

such other period as the City Manager in his discretion may direct for a period of not more than the maximum period permitted by law, and with respect to payments by the City of the amount of Component Installment Payments attributable to interest, the true interest cost shall not exceed eight percent (8%) per annum, and the City Manager and his specified designees, and each of them, are hereby authorized and directed to accept or reject provisions for the redemption of the 1997 Bonds.

SECTION 4. All actions theretofore taken by any official or officials of the City, with respect to the issuance or sale of the 1997 Bonds, or in connection with or related to any of the agreements referenced herein or the financing of the Project are hereby approved, confirmed and ratified; and such other officials of the City as may be authorized by the City Manager 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 1997 Bonds and the disbursement of proceeds thereof in accordance with this Ordinance, and as approved to form by the City Attorney or his specified designee and with such other changes that may be required by Orrick, Herrington & Sutcliffe and Lofton, De Lancie & Nelson, as Co-Bond Counsel ("Co-Bond Counsel"), such approval to be conclusively evidenced by such officer's execution and delivery thereof.

SECTION 5. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Kelly J Salt  
Kelly J. Salt  
Deputy City Attorney

KJS:pev  
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Or. Dept. Fin. & Tech. Svcs.  
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