

ORDINANCE NUMBER O- 19194 (NEW SERIES)

ADOPTED ON JUN 30 2003

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 NOT TO EXCEED \$1,200,000,000 AGGREGATE PRINCIPAL AMOUNT OF THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO SUBORDINATED SEWER REVENUE BONDS, SERIES 2003A AND SERIES 2003B (PAYABLE SOLELY FROM SUBORDINATED INSTALLMENT PAYMENTS SECURED BY WASTEWATER SYSTEM NET REVENUES); APPROVING THE FORM OF AN INDENTURE AND APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDATORY SUPPLEMENT AND A 2003 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 [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 financing assistance to the City; and

WHEREAS, the Authority has previously issued its (a) Sewer Revenue Bonds, Series 1993 (Payable Solely From Installment Payments Secured By Wastewater System Net Revenues), (b) Sewer Revenue Bonds, Series 1995 (Payable Solely From Installment Payments Secured By Wastewater System Net Revenues), (c) Sewer Revenue Bonds, Series 1997A and 1997B (Payable Solely From Installment Payments Secured By Wastewater System Net Revenues), and

(d) Sewer Revenue Bonds, Series 1999A and 1999B (Payable Solely From Installment Payments Secured By Wastewater System Net Revenues) [collectively, Outstanding Parity Bonds], to finance certain additions, betterments, extensions and improvements of the City's Wastewater System [Project]; and

WHEREAS, to effectuate the additions, betterments, extensions and improvements of the Project with the proceeds of the Outstanding Parity Bonds, the Authority agreed to sell components of the Project financed with the proceeds of the Outstanding Parity Bonds to the City pursuant to a Master Installment Purchase Agreement, dated as of September 1, 1993, between the Authority and the City, as subsequently amended and supplemented from time to time [Installment Purchase Agreement]; and

WHEREAS, the City and the Authority desire to amend the provisions of the Installment Purchase Agreement to, among other things, provide a second priority lien on Net System Revenues to secure the payment of Subordinated Obligations (as such term is defined in the Installment Purchase Agreement) and to enter into a First Amendatory Supplement to effect such amendments [First Amendatory Supplement]; and

WHEREAS, the City desires to effect the further addition, betterment, extension and improvement of the Project and also desires to refund all or a portion of the Outstanding Parity Bonds; and

WHEREAS, to facilitate the financing of the Project and the refunding of all or a portion of the Outstanding Parity Bonds, the City and the Authority propose to enter into a 2003 Supplement to the Installment Purchase Agreement [2003 Supplement], amending and supplementing the Installment Purchase Agreement; and

WHEREAS, under the Installment Purchase Agreement and the 2003 Supplement, the City will be obligated to make 2003 Subordinated Installment Payments (as defined in the 2003 Supplement) to the Authority, which 2003 Subordinated Installment Payments shall constitute Subordinated Obligations under the Installment Purchase Agreement; and

WHEREAS, to provide funds to finance the Project, to refund all or a portion of the Outstanding Parity Bonds, to fund a bond reserve fund and to pay costs of issuance, the City desires that the Authority issue its Subordinated Sewer Revenue Bonds, Series 2003A and 2003B (Payable Solely from Subordinated Installment Payments Secured By Wastewater System Net Revenues) [2003 Subordinated Bonds]; and

WHEREAS, to provide for the authentication and delivery of the 2003 Subordinated Bonds, to establish and declare the terms and conditions upon which the 2003 Subordinated Bonds are to be issued and secured, and to secure the repayment thereof, it is proposed that the Authority and Wells Fargo Bank, National Association, or such other trustee named in the indenture [Trustee] enter into an indenture [Subordinated Indenture]; and

WHEREAS, the City may desire that the Authority issue one or more series of revenue bonds [2003 Parity Revenue Bonds] in addition to, or in lieu of, the 2003 Subordinated Bonds, which would be payable from Installment Payments that are Parity Obligations (as those terms are defined in the Installment Purchase Agreement), and in that event, the City desires to approve the issuance by the Authority of the 2003 Parity Revenue Bonds and the execution of an indenture and a supplement to the Installment Purchase Agreement relating thereto; and

WHEREAS, the City is authorized to undertake all of the actions described in this Ordinance 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 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 (1) the addition, betterment, extension and improvement of the Project and (2) the refunding of all or a portion of the Outstanding Parity Bonds, through the issuance by the Authority of the 2003 Subordinated Bonds in the aggregate combined principal amount of not to exceed One Billion Two Hundred Million Dollars (\$1,200,000,000), and the investment of a portion of the proceeds of the 2003 Subordinated Bonds in instruments with a term of maturity in excess of five years, if such investment is deemed to be in the best interests of the City, as determined by the City Manager and the Deputy City Manager, or their specified designees [each, an Authorized Signatory], and each of them in consultation with the financial advisors to the City, substantially in accordance with the Subordinated Indenture, are hereby approved, and specifically, the form and content of the Subordinated Indenture submitted to this meeting, a copy of which is on file in the office of the City Clerk as Document No. OO- 19194-1, are hereby approved. Any Authorized Signatory is 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 certain provisions of the Subordinated Indenture with respect to disbursement of moneys in the Acquisition Fund (as defined in the Subordinated Indenture), 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 that may be required by Orrick, Herrington &

Sutcliffe LLP and Webster & Anderson, as Co-Bond Counsel [Co-Bond Counsel], such approval to be conclusively evidenced by the execution and delivery thereof

Section 3. The form and content of the First Amendatory Supplement submitted to this meeting, a copy of which is on file in the office of the City Clerk as Document No. OO- 19194-2, are hereby approved. Any Authorized Signatory is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the First Amendatory Supplement in substantially the form presented to this meeting, 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 that may be required by Co-Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof

Section 4. The form and content of the 2003 Supplement submitted to this meeting, a copy of which is on file in the office of the City Clerk as Document No. OO- 19194-3, are hereby approved. Any Authorized Signatory is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the 2003 Supplement in substantially the form presented to this meeting, 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 designees and with such other changes that may be required by Co-Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, that the aggregate combined amount of 2003 Subordinated Installment Payments (as defined in the 2003 Supplement), attributable to principal shall not exceed One Billion Two Hundred Million Dollars (\$1,200,000,000), and the 2003 Subordinated Installment Payments shall be payable

semi-annually or otherwise as any Authorized Signatory 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 2003 Subordinated Installment Payments attributable to interest, the true interest cost shall not exceed the maximum interest rate permitted by law, and any Authorized Signatory is hereby authorized and directed to accept or reject provisions for the prepayment of the 2003 Subordinated Installment Payments. Any Authorized Signatory is 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 components of the Project set forth in Exhibit A to the 2003 Supplement, to reduce or eliminate any parts thereof, or to substitute Project components to be financed with proceeds of the 2003 Subordinated Bonds or the 2003 Parity Revenue Bonds.

Section 5. The City hereby acknowledges that the obligation of the City to make 2003 Subordinated Installment Payments (as defined in the 2003 Supplement) to the Authority 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 2003 Supplement and the Subordinated Indenture, and does not constitute a debt of the City, the State of California, or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Section 6. Any Authorized Signatory is hereby authorized and directed to take any and all actions necessary to approve the issuance of the 2003 Parity Revenue Bonds in a principal amount, taken together with the principal amount to the 2003 Subordinated Bonds, that does not exceed One Billion Two Hundred Million Dollars (\$1,200,000,000) and to approve or execute and deliver, as applicable, any indenture and any supplement to the Installment Purchase

Agreement related to the 2003 Parity Revenue Bonds [collectively, the 2003 Parity Revenue Bond Documents]. The 2003 Parity Revenue Bond Documents shall be substantially similar to the documents referenced in Sections 2 and 4 hereof relating to the 2003 Subordinated Bonds, with such modifications as are necessary to reflect that the Installment Payments securing the 2003 Parity Revenue Bonds are Parity Obligations under the Installment Purchase Agreement, and with such further 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, such approval to be conclusively evidenced by the execution and delivery thereof. Any Authorized Signatory is hereby further authorized and directed to invest a portion of the proceeds of the 2003 Parity Revenue Bonds in instruments with a term of maturity in excess of five years, if such investment is deemed to be in the best interests of the City, as determined by any Authorized Signatory in consultation with the financial advisors to the City.

Section 7. Any Authorized Signatory is hereby authorized and directed to take any and all actions and execute any and all documents necessary or advisable to provide for the refunding of all or a portion of the Outstanding Parity Bonds with either the proceeds of the 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds, if such refunding is determined to be in the best interests of the City.

Section 8. Any Authorized Signatory is hereby authorized and directed to take any and all actions and execute any and all documents necessary or advisable to arrange for the insuring of all or a portion of the 2003 Subordinated Bonds and the 2003 Parity Revenue Bonds or to obtain a debt service reserve fund surety bond for the 2003 Subordinated Bonds or the 2003 Parity Revenue Bonds, or to obtain any other form of credit enhancement for the 2003 Subordinated Bonds or the 2003 Parity Revenue Bonds, if, upon the advice of the City's financial

advisors, such insurance, surety bond or other credit enhancement will result in a lower true interest cost.

Section 9. Any Authorized Signatory is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver an interest rate swap agreement and/or a hedging agreement and/or any other form of derivative agreement or arrangement with an institutional party; provided, however, that (a) the institutional party shall have an unsecured, long-term credit rating from either of (1) Moody's Investors Services, Inc., a Delaware Corporation and its successors (and if such corporation shall for any reason no longer perform the functions of a securities rating agency, any other nationally recognized security rating agency designated by the City), of A1 or better; or (2) Standard & Poor's Ratings Group, a New York corporation and its successors (and if such corporation shall no longer perform the function of a securities rating agency any other nationally recognized securities rating agency designated by the City), of A+ or better; (b) the term of the swap agreement, derivative agreement or hedging agreement shall not exceed the final maturity of the 2003 Subordinated Bonds or the 2003 Parity Revenue Bonds; (c) the City's obligations shall be contingent upon certain performance by the counterparty to the agreement or arrangement; and (d) that the City will have the right to terminate the agreement or arrangement upon the occurrence of certain circumstances. The City Council hereby finds and determines that such agreements or arrangements described in this Section 9 will result in a lower cost of borrowing to the City.

In furtherance of the foregoing, any Authorized Signatory is hereby authorized and directed, for and in the name of and oh behalf of the City, to execute and deliver one or more interest rate swap agreements in substantially the form presented to this meeting [each, a Swap Agreement], such Swap Agreements to be in an aggregate notional amount not exceeding the

aggregate amount of the 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds. Each Swap Agreement shall be in such form as may be approved by any Authorized Signatory in consultation with the City Attorney or his specified designees and Co-Bond Counsel, said execution to be conclusive evidence of such approval; provided, however, that (a) the payments made by the counterparty to each Swap Agreement must be made at the same frequency and on the same dates as the interest payments due on that principal amount of 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds, equal to the notional amount of the Swap Agreement; (b) each Swap Agreement shall provide for payment by the City at each payment date under each Swap Agreement of an amount which is net of amounts accrued or payable with respect to the counterparty's payment obligation under the Swap Agreement; and (c) each Swap Agreement shall be such that (1) if, by entering into such Swap Agreement the City will be agreeing to pay a variable interest rate and shall be receiving a fixed rate, then the initial floating rate to be paid by the City expressed as an annual percentage rate shall be less than the fixed rate to be received by the City; or (2) if, by entering into such Swap Agreement the City will be agreeing to pay a fixed interest rate and shall be receiving a variable interest rate, then any Authorized Signatory shall have estimated that the cost of issuing 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds, and entering into the Swap Agreement (including the costs of issuance of the 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds, the costs of issuance of the Swap Agreement and the interest cost over the term of the Swap Agreement) is expected to be at least \$100,000 less than the cost of issuing Fixed Rate Bonds (including the costs of issuance of such 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds, and the interest cost).

In connection with the 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds, or with any Swap Agreement, any Authorized Signatory is hereby authorized and directed, for

and in the name of and on behalf of the City, to execute and deliver one or more interest rate cap agreements in substantially the form of the Swap Agreement presented to this meeting [each a Cap Agreement], such Cap Agreements to be in an aggregate notional amount not exceeding the aggregate amount of the 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds. Each Cap Agreement shall be in such form as may be approved by any Authorized Signatory in consultation with the City Attorney of the City or his designee and Co-Bond Counsel, said execution to be conclusive evidence of such approval. Pursuant to each Cap Agreement, any Authorized Signatory may agree to pay the counterparty to such Cap Agreement a fee [Cap Fee] as provided in the Cap Agreement in order to receive from such counterparty the amount, if any, by which a variable interest rate exceeds a fixed interest rate, each as specified in such Cap Agreement, for each period specified in such Cap Agreement; provided, however, that any Authorized Signatory shall have determined that payment of the Cap Fee is appropriate for the reduction in the City's exposure to variations in interest rates during the term of the 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds, or any Swap Agreement.

Any Authorized Signatory also is hereby authorized to execute and deliver any Swap Agreement that serves to reverse any outstanding Swap Agreement, if in the judgment of any Authorized Signatory, in consultation with the City Attorney of the City or his specified designee, such reversal, together with any other action taken by the City, would result in a reduced overall interest cost to the City. Such reversal will not be considered for purposes of calculating the aggregate amount of such Swap Agreements authorized by this Ordinance pursuant to the preceding paragraph.

Section 10. One or more Forward Delivery Agreements with terms and conditions substantially as set forth in the term sheet entitled Terms and Conditions For a Forward Delivery

Agreement presented to the City Council are hereby approved. Any Authorized Signatory is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver one or more Forward Delivery Agreements, in substantially such form, with such changes therein, deletions therefrom and additions thereto as any Authorized Signatory, in consultation with the City Attorney of the City or his designee shall approve, which approval shall be conclusively evidenced by the execution and delivery of such Forward Delivery Agreements; provided the term of any such Forward Delivery Agreement shall not extend beyond the final maturity of the 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds, as applicable. For purposes of this Section 10, "Forward Delivery Agreement" shall mean an agreement with a counterparty selected by any Authorized Signatory, in which the City agrees to sell to the Trustee securities at a specified price determined by any Authorized Signatory, to be deposited in the Payment Fund and used to pay debt service on the 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds or any other fund such as any escrow funds, as applicable, in consideration of payments to the City of a sum certain which may be payable over time and which based on the advice of the City's financial advisor, reflect market conditions for similar Forward Delivery Agreements.

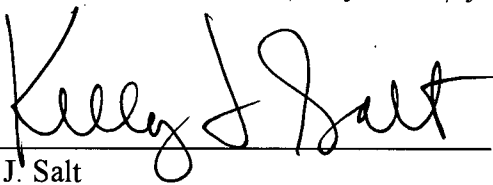
Section 11. All actions heretofore taken by any officers, employees or agents of the City with respect to the issuance, delivery or sale of the 2003 Subordinated Bonds and the 2003 Parity Revenue Bonds, or in connection with or related to any of the agreements referenced herein or the financing of the Project or the refunding of all or a portion of the Outstanding Parity Bonds, are hereby approved, confirmed and ratified; and any Authorized Signatory and any such other officers, employees and agents of the City as may be authorized by the City Manager or the Deputy City Manager 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 2003 Subordinated Bonds and/or the 2003 Parity Revenue Bonds and the disbursement of proceeds thereof in accordance with this Ordinance.

Section 12. 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 13. 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
Deputy City Attorney

KJS:pev
5/30/03
Or.Dept:City Treas.
Aud.Cert:N/A
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