

RESOLUTION NUMBER R-298375

ADOPTED ON SEPTEMBER 15, 2003

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$36,000,000 PRINCIPAL AMOUNT OF SAN DIEGO OPEN SPACE PARK FACILITIES DISTRICT NO. 1 GENERAL OBLIGATION BONDS REFUNDING SERIES 2003, PRESCRIBING THE TERMS AND FORM OF SAID BONDS; FIXING THE MAXIMUM RATE OF INTEREST ON SAID BONDS; AUTHORIZING THE EXECUTION OF SAID BONDS; PROVIDING FOR THE APPLICATION OF CERTAIN MONEYS PLEDGED BY THE CITY OF SAN DIEGO TO PAY THE PRINCIPAL AND INTEREST THEREOF AND THE LEVY OF TAX BY THE DISTRICT IN THE EVENT THAT MONEYS PLEDGED BY THE CITY OF SAN DIEGO ARE INSUFFICIENT THEREFOR; PRESCRIBING THE TERMS OF SALE OF SAID BONDS; APPROVING FORMS OF NOTICE INVITING BIDS, NOTICE OF INTENTION TO SELL BONDS, DECLARATION OF AWARD AND ESCROW AGREEMENT; AND AUTHORIZING THE EXECUTION OF NECESSARY CERTIFICATES.

WHEREAS, on February 23, 1977, the City Council of the City of San Diego [City] adopted Ordinance No. O-12027 which added a new Division 20 [Procedural Ordinance] to Chapter 6, Article 1 of the San Diego Municipal Code, and authorized the City to create park facilities districts for the purpose of acquiring, constructing, improving, maintaining and operating park facilities; and

WHEREAS, pursuant to Resolution No. R-220486 adopted by the City Council on March 20, 1978, the City, as the governing body, formed San Diego Open Space Park Facilities District No. 1 [District], for the purposes of acquiring open space and other park facilities, pursuant to the Procedural Ordinance and, to the extent not inconsistent with the Procedural Ordinance, the

Community Facilities Law of 1911 (commencing with Section 4600, Part 3, Division 5 of the Health and Safety Code), excepting certain provisions hereinafter described [Facilities Law]; and

WHEREAS, pursuant to said Resolution No. R-220486, the following proposition was placed on the June 6, 1978, primary election ballot:

Proposition: Shall the San Diego Open Space Park Facilities District No. 1 incur an indebtedness, to be represented by general obligation bonds of the District, in the maximum principal amount of Sixty five Million Dollars (\$65,000,000), to provide funds for the acquisition of open space and other park facilities, as more particularly described in the San Diego Park Facilities District Procedural Ordinance?; and

WHEREAS, said proposition was approved by an affirmative vote of a majority of the voters of the District voting on the proposition, as required by Section 61.2042 of the Procedural Ordinance; and

WHEREAS, on December 18, 1978, the City Council adopted Resolution No. R-222446 [Master Resolution], authorizing the issuance by the District of \$65,000,000 aggregate principal amount of "San Diego Open Space Park Facilities District No. 1 Open Space Park Bonds of 1978" to be issued in one or more series; and

WHEREAS, pursuant to Resolution No. R-222447, adopted by the City Council on December 18, 1978, the District issued \$15,000,000 original aggregate principal amount of Open Space Park Bonds of 1978, Series 79 [1979 Bonds]; and

WHEREAS, pursuant to Resolution No. R-265809, adopted by the City Council on May 27, 1986, the District issued \$20,000,000 original aggregate principal amount of Open Space Park Bonds of 1978, Series 86A [1986A Bonds]; and

WHEREAS, pursuant to Resolution No. R-265810, adopted by the City Council on May 27, 1986, the District issued \$32,790,000 original aggregate principal amount of Open Space Park Refunding Bonds of 1986 [1986 Bonds]; and

WHEREAS, pursuant to Resolution No. R-283434, adopted by the City Council on February 22, 1994, the District issued \$64,260,000 original aggregate principal amount of Open Space Park Facilities General Obligation Bonds Refunding Series 1994 [1994 Bonds] which bonds refunded all or a portion of the 1979 Bonds, the 1986A Bonds and the 1986 Bonds; and

WHEREAS, the District has determined and hereby declares that prudent management of the fiscal affairs of the District requires that it refund a portion of the 1994 Bonds [Refunded Bonds] by issuing refunding bonds either at the same time or from time to time [Refunding Bonds] pursuant to Section 61.2004 of the Procedural Ordinance; and, except as to matters therein inconsistent with the intent, purpose and provisions of the Procedural Ordinance, the provisions of the Community Facilities Law of 1911 (commencing with Section 4600, Part 3, Division 5 of the Health and Safety Code), excepting Article 2a, subdivision (d) of Section 4616, the first sentence of Section 4618, the first sentence of Section 4623, Sections 4623.5 and 4625 and the last sentence of Section 4638 thereof; and the provisions of Article 9 (commencing with Section 53550), as modified by Article 11 (commencing with Section 53580), Chapter 3, Part 1, Division 2, Title 5 of the Government Code, excepting Section 53569 thereof; all without submitting the question of issuance of the Refunding Bonds to a vote of the qualified electors of the City; and

WHEREAS, the Refunding Bonds will not be issued if the total net interest cost to maturity thereon plus the principal amount thereof exceeds the total net interest cost to maturity

on the Refunded Bonds plus the principal amount thereof, although the principal amount of the Refunding Bonds may be more than, less than, or the same as the Refunded Bonds; and

WHEREAS, the District proposes to conduct a public sale of the Refunding Bonds for the purpose of defeasing the Refunded Bonds; and

WHEREAS, forms of Escrow Agreement, Notice Inviting Bids, Notice of Intention to Sell Bonds, and the Refunding Bonds have been submitted to the governing body of the District; NOW, THEREFORE,

BE IT RESOLVED, by the governing body of the District, as follows:

1. Definitions.

(a) All of the recitals herein are true and correct. The governing body of the District has reviewed all proceedings heretofore taken relative to the authorization of the Refunding Bonds and has found, as a result of such review, and hereby finds and determines that all conditions, things and acts required by law to exist, happen and be performed precedent to and in the issuance of the Refunding Bonds have existed, happened and been performed in due time, form and manner as required by law, and the District is now authorized, pursuant to each and every requirement of law, to incur indebtedness and issue the Refunding Bonds in the manner and form as in this Resolution provided.

(b) Unless the context otherwise requires, the terms defined in this Section 1(b) shall have the meanings herein specified for all purposes of this Resolution:

Authorized Representative – The term “**Authorized Representative**” means each of the City Manager, the Deputy City Manager, the City Treasurer and the Deputy City Treasurer.

Bond – The term “**Bond**” means the Refunding Bonds and unrefunded portion of the 1994 Bonds and any obligations which refund any or all of the Refunding Bonds or any unrefunded portion of the 1994 Bonds.

Bond Fund – The term “**Bond Fund**” shall mean the Bond Fund established pursuant to Section 7.01 of Part 7 of the Master Resolution.

Business Day – The term “**Business Day**” shall mean a day other than a Saturday or Sunday or a day on which banking institutions are authorized or required to be closed for commercial banking purposes in the State of California.

Charter – The term “**Charter**” means the Charter of the City.

City – The term “**City**” shall mean the City of San Diego, California.

City Manager – The term “**City Manager**” shall mean the Manager of the City or his or her designee.

City Ordinance – The term “**City Ordinance**” shall mean Ordinance No. O-19220 adopted by the City on September 29, 2003, pursuant to which the City pledges certain moneys in the Environmental Growth Fund of the City created and maintained pursuant to Section 103.1a of the Charter to the payment of principal and interest on the Bonds as described in Section 10 of this Resolution and approves a form of Paying Agent Agreement.

City Treasurer – The term “**City Treasurer**” shall mean the Treasurer of the City or his or her designee.

Clerk – The term “**Clerk**” shall mean the Clerk of the City and his or her designee.

Code – The term “**Code**” shall mean the Internal Revenue Code of 1986, as amended, and any regulations promulgated or in effect thereunder.

Council – The term “**Council**” shall mean the Council of the City.

Deputy City Manager – The term “**Deputy City Manager**” shall mean any Deputy City Manager of the City or his or her designee.

District – The term “**District**” shall mean the San Diego Open Space Park Facilities District No. 1.

DTC – The term “**DTC**” shall mean The Depository Trust Company, New York, New York.

Environmental Growth Fund – The term “**Environmental Growth Fund**” shall mean the fund of the City created and maintained pursuant to Section 103.1a of the Charter.

Facilities Law – The term “**Facilities Law**” shall mean the Community Facilities Law of 1911 (commencing with Section 4600, Part 3, Division 5 of the Health and Safety Code), excepting Article 2a, subdivision (d) of Section 4616, the first sentence of Section 4618, the first sentence of Section 4623, Sections 4623.5 and 4625 and the last sentence of Section 4638 thereof.

Federal Securities – The term “**Federal Securities**” shall mean direct obligations of, or obligations guaranteed by, the United States of America, in which the District may lawfully invest its money and which are not subject to redemption prior to maturity thereof.

Governing Body – The term “**Governing Body**” shall mean the governing body of the District which, pursuant to the Procedural Ordinance and the Facilities Law, is the Council of the City.

Master Resolution – The term “**Master Resolution**” shall mean Resolution No. R 222446 adopted by the Council on December 18, 1978, authorizing the issuance by the District of \$65,000,000 aggregate principal amount of District bonds, in one or more series.

Mayor – The term “**Mayor**” means the Mayor of the City and his or her designee.

Outstanding – The term “**Outstanding**” when used as of any particular time with reference to the Refunding Bonds shall mean all the Refunding Bonds theretofore issued and delivered by the District under this Resolution except:

(a) Refunding Bonds theretofore cancelled by the Paying Agent or surrendered to the Paying Agent for cancellation;

(b) Refunding Bonds for the payment or redemption of which money or securities in the necessary amount (as provided in Section 15 hereof) shall have been theretofore deposited with the Paying Agent (whether upon or prior to the maturity date of such Refunding Bonds); and

(c) Refunding Bonds in lieu of, or in substitution for, other Refunding Bonds which shall have been issued and delivered pursuant to the terms of Article Four of the Paying Agent Agreement.

Paying Agent – The term “**Paying Agent**” shall mean the Paying Agent appointed by the City Treasurer, for and on behalf of the District, pursuant to the City Ordinance, as paying agent, registrar and transfer agent for the Refunding Bonds, or any successor thereto.

Paying Agent Agreement – The term “**Paying Agent Agreement**” means that certain agreement to be dated December 1, 2003, between the District and the Paying Agent.

Principal Corporate Trust Office – The term “**Principal Corporate Trust Office**” shall mean the principal corporate trust office of the Paying Agent.

Prior Resolution – The term “**Prior Resolution**” shall mean, with respect to the 1994 Bonds, Resolution No. R-283434 adopted by the Council on February 22, 1994.

Procedural Ordinance – The term “**Procedural Ordinance**” shall mean Ordinance No. 12027 adopted by the Council on February 23, 1977.

Rebate Fund – The term “**Rebate Fund**” shall mean the Rebate Fund established pursuant to Section 12 of this Resolution.

Rebate Requirement – The term “**Rebate Requirement**” shall mean the Rebate Requirement as defined in the Tax Certificate.

Record Date – The term “**Record Date**” shall mean the fifteenth day of the month immediately preceding an interest payment date, whether or not such day is a Business Day.

Refunded Bonds – The term “**Refunded Bonds**” shall mean the specified amount of 1994 Bonds to be refunded with the proceeds of the Refunding Bonds.

Refunding Bond Owner or Owner or owner – The term “**Refunding Bond Owner**” or “**Owner**” or “**owner**” shall mean the registered owner of an Outstanding Bond.

Refunding Bonds – The term “**Refunding Bonds**” shall mean San Diego Open Space Park Facilities District No. 1 General Obligation Bonds Refunding Series 2003 issued in the original principal amount not to exceed \$36,000,000 pursuant to the terms of this Resolution.

Resolution – The term “**Resolution**” shall mean this Resolution as adopted by the Governing Body of the District on September 15, 2003.

Tax Certificate – The term “**Tax Certificate**” shall mean the tax and nonarbitrage certificate executed by the District at the time of issuance and delivery of the Refunding Bonds, relating to the requirements of Section 148 of the Internal Revenue Code of 1986, as amended, as such certificate may be amended or supplemented.

Underwriter – The term “**Underwriter**” shall mean the original purchaser or purchasers of the Refunding Bonds.

1979 Bonds – The term “**1979 Bonds**” shall mean the Open Space Park Bonds of 1978, Series 79 issued in the original aggregate principal amount of \$15,000,000.

1986 Bonds – The term “**1986 Bonds**” shall mean Open Space Park Refunding Bonds of 1986 issued in the original aggregate principal amount of \$32,790,000.

1986A Bonds – The term “**1986A Bonds**” shall mean Open Space Park Bonds of 1978, Series 86A, issued in the original aggregate principal amount of \$20,000,000.

1994 Bonds – The term “**1994 Bonds**” shall mean Open Space Park Facilities General Obligation Bonds Refunding Series 1994 issued in the original aggregate principal amount of \$64,260,000 which bonds refunded all or a portion of the 1979 Bonds, the 1986A Bonds and the 1986 Bonds.

2. **Principal Amount; Sale of Refunding Bonds.** The Governing Body of the District hereby authorizes the sale of not to exceed \$36,000,000 principal amount of Refunding Bonds of the District (and the designation thereof as the “San Diego Open Space Park Facilities District No. 1 General Obligation Bonds Refunding Series 1994”) to the Underwriter.

3. **Terms of Refunding Bonds; Maturities.** The Refunding Bonds shall be dated their date of delivery. The Refunding Bonds shall bear interest at a rate of not to exceed the

greater of the maximum rate permitted by law at the time of issuance or eight percent (8%) per annum (the exact rate to be determined upon sale of the Refunding Bonds), payable on July 1, 2004, and semiannually thereafter on January 1 and July 1 of each year, calculated on the basis of a 360-day year comprised of twelve 30 day months. The Refunding Bonds shall be in fully registered form, without coupons, in denominations of \$5,000 or any integral multiple thereof, provided that no Refunding Bond shall have principal maturing on more than one date, and shall mature on January 1 of each of the years not later than year 2009, and in an aggregate principal amount not greater than \$36,000,000.

The principal of the Refunding Bonds shall be payable in lawful money of the United States of America to the registered Owner thereof, upon the surrender thereof at the Principal Corporate Trust Office of the Paying Agent. Payment of the interest on any Refunding Bond shall be made to the person appearing on the bond registration books of the Paying Agent as the Owner thereof as of the Record Date for such interest payment date, such interest to be paid by check or draft mailed to such Owner at such Owner's address as it appears on such registration books or at such address as the Owner may have filed with the Paying Agent for that purpose.

Each Refunding Bond shall bear interest from the interest payment date next preceding the date of authentication thereof unless it is authenticated as of a day during the period from the Record Date next preceding an interest payment date to such interest payment date, inclusive, in which event it shall bear interest from such interest payment date, or unless it is authenticated on or before July 1, 2004, in which event it shall bear interest from its date of issuance; provided, however, that if, at the time of authentication of any Refunding Bond, interest is in default on the Outstanding Refunding Bonds, such Refunding Bond shall bear interest from the interest

payment date to which interest has previously been paid or made available for payment on the Outstanding Refunding Bonds.

4. **Redemption.** The Refunding Bonds are not subject to redemption prior to maturity.

5. **Refunding Bond Execution and Registration.** In accordance with Section 3.09 of the Master Resolution, the Refunding Bonds shall be issued in the name of and for the District, and signed by the manual or facsimile signatures of the City Treasurer and the Mayor of the City, and attested by the manual signature of the Clerk or Deputy Clerk, which Clerk or Deputy Clerk shall cause the official seal of the City to be printed upon each of the Refunding Bonds. In case any officer whose signature appears on the Refunding Bonds shall cease to be such officer before the delivery of the Refunding Bonds to their purchasers, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until the delivery of the Refunding Bonds. The Refunding Bonds shall be authenticated by the Paying Agent.

Only such of the Refunding Bonds as shall bear thereon a certificate of authentication and registration in the form hereinafter recited, executed by the Paying Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Resolution, and such certificate of the Paying Agent shall be conclusive evidence that the Refunding Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Resolution.

6. **Form of Refunding Bond.** The Refunding Bonds and the Paying Agent's certificate of authentication and registration and the form of assignment to appear thereon shall be in substantially the forms, respectively, attached hereto as Exhibit A, with necessary or

appropriate variations, omissions and insertions as permitted or required by this Resolution (provided that if a portion of the text of the Refunding Bonds is printed on the reverse of the Refunding Bonds, the following legend shall be printed on the Refunding Bonds: "THE PROVISIONS OF THIS REFUNDING BOND ARE CONTINUED ON THE REVERSE HEREOF AND SUCH CONTINUED PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE").

7. **City of San Diego Pledge; Levy of Property Taxes; Bond Fund.** The City pledges in Section 1 of the City Ordinance for the purpose of paying the principal of and interest on the Bonds, to pay into the Bond Fund, on or before July 15 of each year, commencing July 15, 2004, an amount equal to the lesser of two thirds of the moneys paid into the Environmental Growth Fund or such amount from said fund as is necessary to pay debt service on the Bonds coming due on January 1 and July 1 of the next calendar year until the final maturity of all Outstanding Bonds or earlier redemption thereof; provided, however, if there are insufficient funds on deposit in the Bond Fund on July 15 of each year, to make the next two debt service payments on any Outstanding Bonds, due on January 1 and July 1 of the next calendar year, the City shall levy, on the next tax roll, a property tax on behalf of the District to cover the amount of the shortfall; provided further, however, that with respect to the debt service payment due with respect to the Refunding Bonds on July 1, 2004, the City is required under the City Ordinance to ensure that, on the date of issuance and delivery of the Refunding Bonds, there is an amount sufficient to make said debt service payment on deposit in the Bond Fund.

For the purpose of paying principal of and interest on Outstanding Bonds in the event the moneys pledged by the City pursuant to the City Ordinance as described above and received by the Paying Agent are insufficient therefor, the Governing Body of the District shall instruct the

City, at the time of making the general tax levy for each fiscal year until all Outstanding Bonds are paid or until there is a sum set apart for that purpose sufficient to meet all payments of principal of and interest on Outstanding Bonds as they become due, to levy and collect a tax sufficient, together with any available amounts on deposit in the Bond Fund and amounts on deposit in the Bond Fund resulting from payments made by the City as described in the first paragraph of this Section, to pay the interest on the Bonds and such part of the principal as will become due before the proceeds of a tax levied at the next general tax levy will be available. Such taxes shall be levied and collected as other District taxes and shall be in addition to all other taxes and shall be used only for payment of the principal of Outstanding Bonds and interest thereon. All taxes specified in this Section 7, to be used to pay principal of or interest on Outstanding Bonds, if any, shall be forthwith paid into the Bond Fund. There shall likewise be deposited in the Bond Fund upon delivery of the Refunding Bonds to the purchaser thereof, any moneys received on account of any premium paid on any of the Refunding Bonds and interest accrued on any of the Refunding Bonds from their date to the date of delivery and actual payment of the purchase price thereof, to be applied solely to the payment of the Refunding Bonds.

So long as any of the Bonds are Outstanding, except as provided in Section 12 hereof as it pertains to the Refunding Bonds and except as provided in the corresponding section of the Prior Resolution, moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on Outstanding Bonds as such principal and interest shall become due and payable; provided, however, that when all of the principal of and interest on all Bonds shall have been paid, any balance of money then remaining in the Bond Fund shall be transferred to the Environmental Growth Fund.

On or before the Business Day preceding each day on which principal of or interest on the Refunding Bonds is due to be paid, the City Treasurer shall cause to be transferred from the Bond Fund to the Paying Agent moneys in an amount sufficient to make the next succeeding payments of principal and interest due with respect to the Refunding Bonds.

8. **Books and Records.** The District hereby covenants to keep, or cause to be kept, at all times proper and current books, records and accounts regarding the Refunding Bonds. Such records shall be available for inspection upon reasonable request by the Paying Agent or the Refunding Bond Owners.

9. **Application of Proceeds of the Refunding Bonds.** The proceeds of the sale of the Refunding Bonds and the initial City contribution to the Bond Fund as required by Section 7 hereof, shall be deposited simultaneously with the delivery of the Refunding Bonds as follows:

(i) There shall be deposited into the Bond Fund an amount representing the City's initial contribution to the Bond Fund as required by Section 7 hereof; and

(ii) There shall be deposited into subaccounts established within the Escrow Fund maintained and administered by U.S. Bank Trust National Association, as escrow agent [Escrow Agent] pursuant to the Escrow Agreement dated December 1, 2003, by and among the District, the City and the Escrow Agent, amounts sufficient to pay the redemption price of each series of Refunded Bonds, or portions thereof, to be refunded.

10. **Notice Inviting Bids; Notice of Intention to Sell Bonds.** The Refunding Bonds shall be offered for sale and electronic bids therefor shall be received by the Governing Body of the District at the place and at the time and date fixed in a Notice Inviting Bids in substantially the form submitted to this meeting [Notice], relating to the public sale of the Refunding Bonds,

which is hereby approved with such additions, changes or corrections as an Authorized Representative, for and on behalf of the District, may approve. An Authorized Representative, for and on behalf of the District, is hereby authorized and directed to distribute, or to cause to be distributed, copies of the Notice in connection with the offering and sale of the Refunding Bonds. An Authorized Representative, for and on behalf of the District, is hereby authorized and directed to award the Refunding Bonds to the highest bidder or bidders on the basis of the lowest true interest cost to the District all in accordance with the Notice, subject to the following limitations: (i) the true interest cost shall not exceed the maximum authorized by law; (ii) there are positive present value savings between the debt service on the bonds to be refunded and the bonds to be issued, as calculated by the City's financial advisor; and (iii) this Resolution and the City Ordinance shall be in full force and effect. An Authorized Representative reserves the right, in his or her discretion, on behalf of the District, to reject any and all bids and to waive any irregularity or informality in any bid. An Authorized Representative shall award, for and on behalf of the District, the Refunding Bonds in accordance with the foregoing by the execution and delivery to the successful bidder of a Declaration of Award in the form submitted to this meeting.

A Notice of Intention to Sell Bonds in substantially the form submitted to this meeting shall be published once in The Bond Buyer and a newspaper of general circulation in the City within the time prescribed by law.

11. **Escrow Agreement.** The proposed form of Escrow Agreement among the District, the City and the Escrow Agent, providing for the deposit of Federal Securities to defease the Refunded Bonds, in the form presented to this meeting, is hereby approved, and an Authorized Representative is authorized and directed to execute and deliver the same,

substantially in the form presented to this meeting, to the Escrow Agent for the Refunded Bonds to be refunded pursuant hereto, together with Federal Securities purchased from the proceeds of the Refunded Bonds to be refunded pursuant hereto, whereupon said Refunded Bonds will be deemed to be no longer Outstanding within the meaning of the Prior Resolution.

12. **Rebate Fund.** (a) In addition to the other funds and accounts created pursuant hereto, the District shall establish and maintain a fund separate from any other fund or account established and maintained hereunder designated the "San Diego Open Space Park Facilities District No. 1 General Obligation Bonds Refunding Series 2003 Rebate Fund" [Rebate Fund]. There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Tax Certificate. All money at any time deposited in the Rebate Fund shall be held by the District, in trust, to the extent required to satisfy the Rebate Requirement, for payment to the United States of America. Notwithstanding defeasance of Refunding Bonds pursuant to Section 15 or anything to the contrary contained herein, all amounts required to be deposited into or on deposit in the Rebate Fund shall be governed exclusively by this Section 12 and by the Tax Certificate (which is incorporated herein by reference). Any funds remaining in the Rebate Fund after payment in full of all of the Refunding Bonds and after payment of any amounts described in this Section 12 may be transferred to the Environmental Growth Fund.

(b) In furtherance of the covenants of the District set forth above, the Governing Body of the District will cause an Authorized Representative to comply with the Tax Certificate.

13. **Continuing Disclosure.** The Continuing Disclosure Agreement, in substantially the form submitted to this meeting, is hereby approved. The City, as the governing body of the District, hereby undertakes all responsibility for compliance with continuing disclosure requirements, and the District shall have no liability to the Owners or any other person with

respect to Rule 15c2-12. The City Manager and the Deputy City Manager are hereby authorized and directed to execute and deliver the Continuing Disclosure Agreement substantially in the form submitted to this meeting with such other corrections and additions as may be determined to be necessary or desirable.

14. **Benefit of Resolutions.** The provisions of this Resolution and of any other resolution supplementing or amending this Resolution and adopted prior to the issuance of the Refunding Bonds hereunder or adopted subsequent to such issuance if permitted herein, shall constitute a contract between the District and the Refunding Bond Owners and the provisions hereof and thereof shall be enforceable for the equal benefit and protection of all Owners of Refunding Bonds similarly situated by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is now or may hereafter be authorized under the laws of the State of California in any court of competent jurisdiction. Said contract is made under and is to be construed in accordance with the laws of the State of California.

After the issuance and delivery of the Refunding Bonds, this Resolution and any amendatory or supplemental resolutions thereto shall be irrevocable, but shall be subject to supplement, modification or amendment to the extent and in the manner provided in this Resolution and the Master Resolution, but to no greater extent and in no other manner.

15. **Defeasance.** Refunding Bonds shall no longer be deemed to be outstanding and unpaid if the District shall have made adequate provision for the payment, in accordance with the Refunding Bonds and this Resolution, of the principal and interest to become due thereon at maturity and the District shall have given to the Paying Agent irrevocable instructions to promptly mail to the Owners of such Refunding Bonds a notice that a deposit contemplated by this Section 15 has been made with the Paying Agent and that such Refunding Bonds are deemed

to have been paid in accordance with this section, and stating the maturity date upon which money is to be available for the payment of principal of such Refunding Bonds. Such provision for payment shall be deemed to be adequate if the District shall have irrevocably set aside, in a special trust fund or account held by the Paying Agent, moneys in an amount sufficient, and/or Federal Securities the interest and principal of which, if paid on the scheduled payment dates, will provide an amount sufficient, to pay when due the principal of and interest on the Refunding Bonds on and prior to the maturity date.

16. **Consent of Owners.** Any request, consent or other instrument required by this Resolution to be signed and executed by Owners of Refunding Bonds may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Owners in person or by agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument, or of a writing appointing any such agent, shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the District if made in the manner provided in this Section 16.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged the execution thereof.

The ownership of Refunding Bonds shall be provided by the Register of such Refunding Bonds.

Any request, consent or vote of the Owner of any Refunding Bond shall bind every future Owner of the same Refunding Bond and the Owner of every Refunding Bond issued in exchange

therefor or in lieu thereof, in respect of anything done or suffered to be done by the District in pursuance of such request, consent or vote.

In determining whether the Owners of the requisite aggregate principal amount of Refunding Bonds have concurred in any demand, request, direction, consent or waiver under this Resolution, Refunding Bonds which are owned by the District, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the District, shall be disregarded and deemed not to be outstanding for the purpose of any such determination.

17. **Severability.** If any covenant, agreement or provision, or any portion thereof, contained in this Resolution and any action taken thereunder, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, then the remainder of this Resolution and the application of any such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Resolution and the Refunding Bonds issued pursuant hereto shall remain valid and the Owners of the Refunding Bonds shall retain all valid rights and benefits accorded to them under this Resolution and the Constitution and laws of the State of California.

18. **Further Action.** The Mayor, each Authorized Representative, the City Attorney and the City Clerk and their authorized designees, acting for and on behalf of the District, be and they are hereby severally and jointly authorized and directed to do and perform, or cause to be done and performed, from time to time any and all acts and things consistent with this Resolution necessary or appropriate to carry the same into effect and to execute and deliver any and all certificates and representations, including signature certificates, no litigation certificates, arbitrage bond certificates and certificates concerning the contents of the official statement

proposed to be distributed in connection with the sale of the Refunding Bonds, necessary and desirable to accomplish the transactions set forth above.

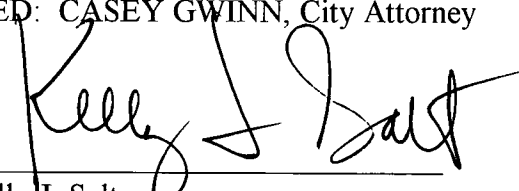
19. **Amendments.** Subject to Section 2.19 of the Master Resolution, this Resolution may be modified or amended without the consent of the Refunding Bond Owners in order to (i) cure any ambiguity or formal defect or omission in this Resolution; (ii) grant to or confer upon the Refunding Bond Owners any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon them; or (iii) amend or supplement this Resolution in any other respect, provided that such amendment or supplement is not materially adverse to the interests of the Refunding Bond Owners. For any other purpose, this Resolution may be modified or amended only with the consent of the Owners of at least sixty (60) percent of all Refunding Bonds then outstanding; provided, however, that no such modification or amendment shall extend the maturity of or the times for paying interest thereon, reduce the interest rate on or principal amount of any Refunding Bond, change the monetary medium in which principal and interest is payable, or reduce the percentage of consent required for amendment hereof without the express consent of all the Owners of Refunding Bonds so affected.

20. **Investment Earnings.** Any interest, profit or loss on the investment of moneys in the Bond Fund shall be credited or charged to that Fund. To the extent required by the Tax Certificate, in order to comply with Section 12 hereof, interest and profits in the Bond Fund shall be transferred to the Rebate Fund at the times and in the amounts as required by the Tax Certificate for payment to the United States as provided in Section 12 hereof. To the extent not so transferred such interest and profits may remain in the Bond Fund as the case may be, or to the extent permitted by law, may be transferred therefrom to the Environmental Growth Fund and used for any lawful purpose.

21. **Effectiveness.** This Resolution shall take effect immediately upon its adoption.

APPROVED: CASEY GWINN, City Attorney

By



Kelly J. Salt
Deputy City Attorney

KJS:pev
09/02/03
09/09/03 Cor.Copy 1
01/20/04 Cor.Copy2
Or.Dept: Treas
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