

RESOLUTION NUMBER R- 299279

ADOPTED ON JUN 08 2004

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A SUBORDINATED INDENTURE, A BOND PURCHASE AGREEMENT AND A SUPPLEMENT TO THE MASTER INSTALLMENT PURCHASE AGREEMENT 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 [Agency] 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), to finance certain additions, betterments, extensions and improvements of the City's Wastewater System [Project]; and

WHEREAS, to effectuate the addition, betterment, extension and improvement of the Project, the City and the Authority entered into a Master Installment Purchase Agreement, dated as of September 1, 1993, between the City and the Authority, as subsequently amended and

supplemented from time to time [Agreement], pursuant to which the Authority agreed to sell components of the Project to the City; and

WHEREAS, pursuant to Ordinance Number 0-19194 adopted on June 30, 2003 [the Bond Ordinance], this Council approved a First Amendatory Supplement to the Agreement [First Amendatory Supplement], which, among other things, provided a second priority lien on Net System Revenues to secure the payment of Subordinated Obligations (as such term is defined in the Agreement), approved the form of a Subordinated Indenture, and approved the issuance of Subordinated Bonds in a principal amount not to exceed \$1,200,000,000; and

WHEREAS, to facilitate the financing of the Project, the City and the Authority propose to enter into a 2004 Supplement to the Agreement [2004 Supplement], amending and supplementing the Agreement, pursuant to which the Authority will sell and the City will purchase additional components of the Project; and

WHEREAS, under the Agreement and the 2004 Supplement, the City will be obligated to make Series 2004 Subordinated Installment Payments (as defined in the 2004 Supplement) to the Authority, which Series 2004 Subordinated Installment Payments shall constitute Subordinated Obligations under the Agreement; and

WHEREAS, to provide funds to finance the Project and to pay costs of issuance, the City desires that the Authority issue its Non-Transferable Subordinated Sewer Revenue Bonds, Series 2004 (payable Solely from Series 2004 Subordinated Installment Payments Secured By Wastewater System Net Revenues) [Series 2004 Subordinated Bonds]; and

WHEREAS, to provide for the authentication and delivery of the Series 2004 Subordinated Bonds, to establish and declare the terms and conditions upon which the Series

2004 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, the Authority and Bank of America, N.A. [Purchaser], propose to enter into a Bond Purchase Agreement for the purchase of the Series 2004 Subordinated Bonds; and

WHEREAS, this Council finds that the financing of the Project results in significant public health benefits, including but not limited to more efficient delivery of service, and that the Project constitutes facilities for the production, storage, transmission, or treatment of water, recycled water, or wastewater; and

WHEREAS, the City is authorized to undertake all of the actions described in this Resolution pursuant to its Charter and the Constitution and other applicable laws of the State of California; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that:

1. The City Council hereby finds and determines that the statements set forth above in the recitals to this Resolution are true and correct.
2. The Council hereby finds that the Project will provide significant public benefits in accordance with the criteria specified in Section 6586 of the Government Code.
3. The Bond Ordinance duly authorized the First Amendatory Supplement, the Subordinated Indenture and the Series 2004 Subordinated Bonds, and the issuance of the Series 2004 Subordinated Bonds are hereby authorized in accordance with the Bond Ordinance.

4. The City has determined that it is in the best interests of the City that the Series 2004 Subordinated Installment Payments and the Series 2004 Subordinated Bonds bear interest at a variable rate based on the index rate in accordance with the terms of the Subordinated Indenture.

5. The form and content of the 2004 Supplement to the Agreement [2004 Supplement] to be dated June 1, 2004, among the Authority and the City, a copy of which is on file in the office of the City Clerk as Document No. 299279-1 and submitted to this meeting, is hereby approved. The City Manager, the Deputy City Manager, or the City Treasurer or any of their respective specified designees [each, an Authorized Signatory], 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 the 2004 Supplement in substantially the form submitted to this meeting, with such additions and changes therein as any Authorized Signatory shall approve as being in the best interests of the City, and as approved as to form by the City Attorney or his specified designee, and with such other changes as are required by Hawkins Delafield & Wood LLP as Bond Counsel [Bond Counsel], such approval to be conclusively evidenced by the execution and delivery thereof in connection with the execution and delivery of the Bond Purchase Agreement.

6. 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. 299279-2 is 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, 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 Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

7. The form and content of the Bond Purchase Agreement [Bond Purchase Agreement] to be dated the date of sale of the Series 2004 Subordinated Bonds, among the Authority, the City and the Purchaser, a copy of which is on file in the office of the City Clerk as Document No. 299279⁻³ and submitted to this meeting, are hereby approved. The Authorized Signatories are hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the Bond Purchase Agreement in substantially the form submitted to this meeting, with such additions and changes therein as any Authorized Signatory shall approve as being in the best interests of the City, and as approved as to form by the City Attorney or his specified designee, and with such other changes as are required by Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof in connection with the execution and delivery of the Bond Purchase Agreement, any Authorized Signatory is further authorized to negotiate the principal amount of the Series 2004 Subordinated Bonds to be sold pursuant to such Bond Purchase Agreement up to a maximum aggregate combined amount of not to exceed \$152,000,000, and the true interest cost of the issue shall not exceed the maximum interest rate permitted by law.

8. Each Authorized Signatory is hereby authorized and directed to take any and all actions necessary to approve the issuance of the Series 2004 Subordinated Bonds in a principal amount that does not exceed \$152,000,000.

9. All actions heretofore taken by any officers, employees or agents of the City with respect to the issuance, delivery or sale of the Series 2004 Subordinated Bonds, of Bond Counsel in connection with or related to any of the documents referenced herein, or the financing of the

Project, 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 (including but not limited to any tax certificates and agreements), which they, or any of them, may deem necessary or advisable to consummate the lawful issuance and delivery of the Series 2004 Subordinated Bonds and the disbursement of proceeds thereof in accordance with this Resolution.

10. This Resolution shall take effect immediately upon its adoption.

APPROVED: CASEY GWINN, City Attorney

By


Kelly V. Salt
Deputy City Attorney

KJS:pev
05/25/04
Or.Dept: Fin.Svcs.
R-2004-1322