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**FIRST AMENDATORY SUPPLEMENT**

**To Master Installment Purchase Agreement  
Dated As of September 1, 1993 By and Between  
the City of San Diego and the Public Facilities  
Financing Authority of the City of San Diego**

**by and between the**

**CITY OF SAN DIEGO**

**and**

**PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO**

**Dated as of [●], 2003**

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## FIRST AMENDATORY SUPPLEMENT

**THIS FIRST AMENDATORY SUPPLEMENT** (this “First Amendatory Supplement”), executed and entered into as of [•], 2003, is by and between the CITY OF SAN DIEGO, a municipal corporation organized and existing under a charter duly adopted pursuant to the provisions of the Constitution of the State of California (the “City”), and the PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, a joint exercise of powers entity organized and existing under and by virtue of the laws of the State of California (the “Authority”).

### WITNESSETH:

**WHEREAS**, the City and the Authority have entered into a Master Installment Purchase Agreement dated as of September 1, 1993, as amended and supplemented by the 1993-1 Supplement dated as of September 1, 1993, the 1995-1 Supplement dated as of December 1, 1995, the 1997-1 Supplement dated as of February 1, 1997, the 1998-1 Supplement dated as of September 1, 1998, and the 1999-1 Supplement dated as of March 1, 1999 (collectively, the “Agreement”), pursuant to which the Authority has agreed to sell the Project (as defined in the Agreement) to the City and the City has agreed from time to time to purchase Components of the Project as are specified in Supplements thereto;

**WHEREAS**, pursuant to Section 10.03 of the Agreement, the City and the Authority may amend the Agreement, with the written consent of any Credit Provider but without the written consents of any Owner of Installment Obligations, to make any amendment or modification which does not materially adversely affect the interests of the Owners of the Installment Payment Obligations;

**WHEREAS**, the City and the Authority desire to amend certain provisions of the Agreement which do not materially adversely affect the interests of the Owners of the Installment Payment Obligations; and

**WHEREAS**, in compliance with Section 10.03 of the Agreement, each Credit Provider is hereby consenting to the execution and delivery of this First Amendatory Supplement by the City and the Authority;

**NOW THEREFORE**, the parties hereto have agreed as follows:

## ARTICLE I

### DEFINITIONS

**SECTION 1.1. Definitions.** Any capitalized terms used in this First Amendatory Supplement have the meaning given those terms in the Agreement, except as otherwise expressly provided.

## ARTICLE II

### CERTAIN AMENDMENTS TO THE MASTER INSTALLMENT PURCHASE AGREEMENT

**SECTION 2.1.** Addition of Definitions. The following definitions are hereby added to Section 1.01 of the Agreement:

#### Reserve Fund Credit Facility

The term “Reserve Fund Credit Facility” shall mean a letter of credit, line of credit, surety bond, insurance policy or similar facility deposited in a Reserve Fund or Reserve Account in lieu of or in partial substitution for cash or securities on deposit therein.

#### Subordinated Credit Provider

The term “Subordinated Credit Provider” means any municipal bond insurance company, bank or other financial institution or organization which is performing in all material respects its obligations under any Subordinated Credit Support arrangements for some or all of the Subordinated Obligations.

#### Subordinated Credit Provider Expenses

The term “Subordinated Credit Provider Expenses” means the fees and expenses payable to any Subordinated Credit Provider in connection with the provision of Subordinated Credit Support; provided, that the term “Subordinated Credit Provider Expenses” shall not include any Subordinated Credit Provider Reimbursement Obligations.

#### Subordinated Credit Provider Reimbursement Obligations

The term “Subordinated Credit Provider Reimbursement Obligations” means obligations of the City to repay, from Net System Revenues, amounts advanced by a Subordinated Credit Provider as credit support or liquidity for Subordinated Obligations, which obligation shall be a Subordinated Obligation.

#### Subordinated Credit Support

The term “Subordinated Credit Support” means a policy of insurance, a letter of credit, a stand-by purchase agreement, revolving credit agreement or other credit arrangement pursuant to which a Subordinated Credit Provider provides credit or liquidity support with respect to the payment of interest, principal or the purchase price of any Subordinated Obligations.

### **SECTION 2.2.** Amendment of Certain Definitions.

(a)The definition of “Credit Provider Reimbursement Obligations” contained in Section 1.01 of the Agreement is hereby amended and restated to read as follows (additions noted by underline):

Credit Provider Reimbursement Obligations

The term “Credit Provider Reimbursement Obligations” means obligations of the City to repay, from Net System Revenues, amounts advanced by a Credit Provider as credit support or liquidity for Parity Obligations, which obligations shall be Parity Obligations or Subordinated Obligations, as designated by the City.

(b)The definition of “Issuing Instrument” contained in Section 1.01 of the Agreement is hereby amended and restated to read as follows (additions noted by underline; deletions noted by strikethrough):

Issuing Instrument

The term “Issuing Instrument” shall mean any indenture, trust agreement, loan agreement, lease, or Installment Purchase Agreement or other instrument, including any Supplement, under which Obligations are issued or created.

(c)The definition of “Rating Agencies” contained in Section 1.01 of the Agreement is hereby amended and restated to read as follows (additions noted by underline):

Rating Agencies

The term “Rating Agencies” means Moody’s and S&P, or whichever of them is rating any Parity Obligations or any Subordinated Obligations, as applicable.

(d)The definition of “Subordinated Obligations” contained in Section 1.01 of the Agreement is hereby amended and restated to read as follows (additions noted by underline; deletions noted by strikethrough):

Subordinated Obligations

The term “Subordinated Obligations” means any Obligation~~Obligations~~; (1) that is designated as a Subordinated Obligation in the Issuing Instrument creating such Obligation, (2) the payment of principal and interest on of which is are-subordinated in right of payment to Parity Obligations and (3) that in the Issuing Instrument creating such Obligation there is an express statement that no Owner of such Obligation shall have any right to take any action or enforce any right that has a materially adverse effect on the interests of the Owners of the Installment Payment Obligations.

**SECTION 2.3.** Amendment of Second Paragraph of Section 4.02(a). The second paragraph of Section 4.02(a) of the Agreement is hereby amended and restated to read as follows (additions noted by underline; deletions noted by strikethrough):

Subject to the allocation of the Net System Revenues contained in Section 5.02 hereof, ~~In~~ in the event that a Trustee notifies the City that the amount on deposit in a Reserve Fund or Reserve Account is less than the Reserve Requirement, the City shall deposit or cause to be deposited, solely from Net System Revenues, in such Reserve Fund or Reserve Account such amounts on a monthly basis as are necessary to increase the amount on deposit therein to the Reserve Requirement in the ensuing six months.

**SECTION 2.4.** Amendment of Section 5.01. Section 5.01 of the Agreement is hereby amended and restated to read as follows (additions noted by underline; deletions noted by strikethrough):

**SECTION 5.01. Commitment of the Net System Revenues.**

(a) All Parity Obligations, including Parity Installment Payment Obligations, shall be secured by a ~~prior~~ first priority lien on and pledge of Net System Revenues, and within such lien priority, such Parity Obligations shall be of equal rank without preference, priority or distinction of any Parity Obligations over any other Parity Obligations. The City does hereby grant such first priority lien on and pledge of Net System Revenues to secure Parity Obligations. Such lien and pledge shall constitute a first priority lien on Net System Revenues. All Parity Obligations shall be of equal rank with each other without preference, priority or distinction of any Parity Obligations over any other Parity Obligations.

(b) All Subordinated Obligations shall be secured by a second priority lien on and pledge of Net System Revenues that is junior and subordinate to the lien on and pledge of Net System Revenues securing Parity Obligations. The City does hereby grant such second priority lien on and pledge of Net System Revenues to secure Subordinated Obligations. Such lien and pledge shall constitute a second priority lien on Net System Revenues. All Subordinated Obligations shall be of equal rank with each other without preference, priority or distinction of any Subordinated Obligations over any other Subordinated Obligations.

(c) The City hereby represents and states that it has not previously granted any lien or charge on any of the Net System Revenues except as provided herein; provided, however, that out of Net System Revenues there may be apportioned such sums for such purposes as are expressly permitted by this Article V.

(d) Nothing contained herein shall limit the right and ability of the City to grant liens on and pledges of Net System Revenues that are subordinate to the liens on and pledges of Net System Revenues for the benefit of Parity Obligations or Subordinated Obligations contained herein.

**SECTION 2.5.** Amendment of Section 5.02. Section 5.02 of the Agreement is hereby amended and restated to read as follows (additions noted by underline; deletions noted by strikethrough):

**SECTION 5.02. Allocation of System Revenues**

(a) Payment of Parity Obligations. In order to carry out and effectuate the commitment and pledge contained in Section 5.01, the City agrees and covenants that all System Revenues shall be received by the City in trust and shall be deposited when and as received in the City of San Diego Sewer Revenue Fund, which fund was established pursuant to the Ordinances of the City Council of the City (the "Sewer Revenue Fund") and which fund the City agrees and covenants to maintain so long as any Installment Payments or payments due by the City under any Qualified Swap Agreement related thereto remain unpaid, and all moneys in the Sewer Revenue Fund shall be so held in trust and applied and used solely as provided herein. The City shall pay: (i) directly or as otherwise required all Maintenance and Operation Costs of the Wastewater System; (ii) to the Trustee of the Parity Installment Obligations, ~~as assignee of the Authority~~, for deposit in the Payment Fund for Parity Installment Obligations, the amounts specified in

any Issuing Instrument, as payments due on account of Parity Installment Obligations, ~~other than (A) payments due on account of Qualified Take or Pay Obligations and (B) payments due by the City under a Qualified Swap Agreement;~~ (iii) to the obligee specified therein, any payment due as to any Parity Obligation that is not a Parity Installment Obligation (including any Credit Provider Reimbursement Obligations designated as Parity Obligations), other than (A) payments due on account of Qualified Take or Pay Obligations and (B) payments due by the City under a Qualified Swap Agreement; (iv) to the obligee specified therein, any payment due as to Qualified Take or Pay Obligations; and (v) to the counterparty specified in any Qualified Swap Agreement, the amounts or payments due under such Qualified Swap Agreement as Parity Obligations. In the event there are insufficient Net System Revenues to make all of the payments contemplated by clauses (ii), (iii), (iv) and (v) of this Section 5.02(a) ~~the immediately preceding sentence~~, then said payments ~~shall~~ should be made as nearly as practicable, pro rata, based upon the respective unpaid principal amounts of said Parity Obligations.

(b) Funding of Reserve Funds and Reserve Accounts for Parity Obligations. After the payments contemplated by ~~Section 5.02(a) paragraph (a)~~ above have been made, and in any event not less frequently than May 15 and November 15 of each year or any date on which payments in respect of any Subordinated Obligations are due, any remaining Net System Revenues shall be used to make up any deficiency in the Reserve Funds and Reserve Accounts for Parity Obligations. Notwithstanding the use of a Reserve Fund Credit Facility, as defined in the Indenture, in lieu of depositing funds in the Reserve Funds, ~~as defined in the Indenture~~, and Reserve Accounts for Parity Obligations, in the event of any draw on the Reserve Fund Credit Facility, there shall be deemed a deficiency in ~~such the Reserve Funds and any Reserve Accounts~~ until the amount of the Reserve Fund Credit Facility is restored to its pre-draw amount. In the event there are insufficient Net System Revenues to make up all deficiencies in all Reserve Funds and Reserve Accounts for Parity Obligations, such payments into Reserve Funds and Reserve Accounts shall be made as nearly as practicable pro rata based on the respective unpaid principal amount of all Parity Obligations.

(c) Payment of Subordinated Obligations.

(1) Notwithstanding anything in this Section 5.02(c) and in Section 5.02(d) to the contrary, no payments from the Sewer Revenue Fund shall be made in respect of any Subordinated Obligations unless the following conditions are met:

(A) all Maintenance and Operation Costs of the Wastewater System are being and have been paid and are then current; and

(B) all deposits and payments contemplated by clauses (ii), (iii), (iv) and (v) of Section 5.02(a) above shall have been made in full and no deficiency in any Reserve Fund or Reserve Account for Parity Obligations shall exist, and there shall have been paid, or segregated within the Sewer Revenue Fund, the amounts payable during the current month pursuant to clauses (ii), (iii), (iv) and (v) of Section 5.02(a) above; provided, however, that if the amounts payable during any month pursuant

to clauses (ii), (iii), (iv) or (v) of Section 5.02(a) are not able to be determined at the time of the payment of any Subordinated Obligation due to periods in which the actual interest rate accruing in respect of any Parity Obligations cannot yet be determined, then no payments from the Sewer Revenue Fund shall be made in respect of any Subordinated Obligations unless there shall have been segregated within the Sewer Revenue Fund the maximum amount that may be payable in that month under clauses (ii), (iii), (iv) and (v) of Section 5.02(a) as specified in the Issuing Instruments of the Parity Obligations and in accordance with applicable law;

(2) Subject to Section 5.02(c)(1), the City shall apply any amounts thereafter remaining in the Sewer Revenue Fund (A) to the payment of Subordinated Credit Provider Expenses and (B) to the obligee specified therein, any payment due as to any Subordinated Obligations. In the event that there are insufficient Net System Revenues remaining in the Sewer Revenue Fund after the payments described in Section 5.02(c)(1) to make all of the payments contemplated by clause (B) of the immediately preceding sentence, then said payments shall be made as nearly as practicable, pro rata, based on the respective unpaid principal amounts of said Subordinated Obligations.

(d) Funding of Reserve Funds and Reserve Accounts for Subordinated Obligations. After the payments contemplated by Sections 5.02(c)(1) and 5.02(c)(2) have been made, and in any event (subject to the payments required pursuant to Sections 5.02(c)(1) and 5.02(c)(2)) not later than those times specified in the Issuing Instruments of any Subordinated Obligations or the dates on which any payments in respect of any Obligations that are neither Parity Obligations nor Subordinated Obligations are due, any remaining Net System Revenues in the Sewer Revenue Fund shall be used (A) to fund or to contribute to any Reserve Funds and Reserve Accounts for Subordinated Obligations and (B) to make up any deficiency in the Reserve Funds and Reserve Accounts for Subordinated Obligations, in such amounts as are specified in the Issuing Instruments of the Subordinated Obligations. Notwithstanding the use of a Reserve Fund Credit Facility in lieu of depositing funds in the Reserve Funds and Reserve Accounts for Subordinated Obligations, in the event of any draw on the Reserve Fund Credit Facility, there shall be deemed a deficiency in such Reserve Funds and Reserve Accounts until the amount of the Reserve Fund Credit Facility is restored to its pre-draw amount. In the event there are insufficient Net System Revenues to make up all deficiencies in all Reserve Funds and Reserve Accounts for Subordinated Obligations, such payments into Reserve Funds and Reserve Accounts for Subordinated Obligations shall be made as nearly as practicable pro rata based on the respective unpaid principal amount of all Subordinated Obligations.

(e) Remaining Funds. Any amounts thereafter remaining in the Sewer Revenue Fund after the payments made pursuant to Sections 5.02(a), (b), (c) and (d) may from time to time be used to pay for capital expenditures for the Wastewater System or any other Wastewater System purpose, provided, including payments on account of Subordinated Obligations, provided the following conditions are met:

~~\_\_\_\_\_ (1) \_\_\_\_\_ all Maintenance and Operation Costs of the Wastewater System are being and have been paid and are then current; and~~

~~\_\_\_\_\_ (2) \_\_\_\_\_ all deposits and payments contemplated by Section 5.02(c)(2) clauses (ii), (iii) and (iv) of paragraph (a) above shall have been made in full and no deficiency in any Reserve Fund or Reserve Account for Subordinated Parity Obligations shall exist, and there shall have been paid, or segregated within the Sewer Revenue Fund, the amounts payable during the current month pursuant to Section 5.02(c)(2) clauses (ii), (iii) and (iv) of paragraph (a) above; provided, further, that if the amounts payable during any month pursuant to Section 5.02(c)(2) are not able to be determined at the time of the payment of any Obligation that is neither a Parity Obligation nor a Subordinated Obligation due to periods in which the actual interest rate accruing in respect of any Subordinated Obligations cannot yet be determined, then no payments from the Sewer Revenue Fund shall be made in respect of any such Obligations unless there shall have been segregated within the Sewer Revenue Fund the maximum amount that may be payable in that month under Section 5.02(c)(2) as specified in the Issuing Instruments of the Subordinated Obligations and in accordance with applicable law.~~

**SECTION 2.6.** Amendment of Section 5.03(d). Section 5.03(d) of the Agreement is hereby amended and restated to read as follows (additions noted by underline; deletions noted by strikethrough):

(d) Without regard to Section 5.03(c), if (i) no Event of Default has occurred and is continuing and (ii) no Event of Default or Termination Event (as defined in any Qualified Swap Agreement) under any Qualified Swap Agreement has occurred and is continuing, the City may issue or incur Subordinated Obligations, and such Subordinated Obligations may be paid only in accordance with the provisions of ~~the second paragraph of Section 5.02~~ Section 5.02(c) and Section 5.02(d).

**SECTION 2.7.** Amendment of Section 6.08(a). Section 6.08(a) of the Agreement is hereby amended and restated to read as follows (additions noted by underline):

(a) The City will fix, prescribe and collect rates and charges for the Wastewater Service which will be at least sufficient (i) to pay during each Fiscal Year all Obligations (other than Parity Obligations) payable in such Fiscal Year, and (ii) to yield during each Fiscal Year Net System Revenues equal to one hundred twenty percent (120%) of the Debt Service for such Fiscal Year. The City may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Net System Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this Section 6.08(a).

**SECTION 2.8.** Amendment of Section 8.01. Section 8.01 of the Agreement is hereby amended to add the following as the last two paragraphs of Section 8.01 (additions noted by underline):

Subject to this Section 8.01 and, with respect to any Subordinated Obligation, the Issuing Instrument creating that Subordinated Obligation, the Owners of Subordinated Obligations may enforce the provisions of this Installment Purchase Agreement for their benefit by appropriate legal proceedings. Notwithstanding anything in this Installment Purchase Agreement to the contrary, no Owner of Subordinated Obligations shall have



any right to take any action or enforce any right that has a materially adverse effect on the interests of the Owners of the Installment Payment Obligations and the Authority shall not take any action to enforce, on behalf of any Owner of Subordinated Obligations, any such right.

The payment of Subordinated Obligations shall be subordinated in right of payment to payments on the Parity Obligations (except for any payment in respect of the Subordinated Obligations from the Reserve Funds or Reserve Accounts securing such Subordinated Obligations). In any Event of Default, Owners of Parity Obligations will be entitled to receive payment thereof in full before the Owners of Subordinated Obligations are entitled to receive payment thereof (except for any payment in respect of the Subordinated Obligations from Reserve Funds or Reserve Accounts securing such Subordinated Obligations) and the Owners of the Subordinated Obligations shall become subrogated to the rights of such Owners of Parity Obligations to receive payments with respect thereto.

**SECTION 2.9.** Amendment of Section 8.02. Section 8.02 of the Agreement is hereby amended and restated to read as follows (additions noted by underline; deletions noted by strikethrough):

**SECTION 8.02. Application of Net System Revenues Upon Acceleration.** ~~Subject to the provisions of any Issuing Instrument or Authorizing Ordinance, all~~ All Net System Revenues received after the date of the declaration of acceleration by the Authority as provided in Section 8.01 hereof shall be applied in the following order:

(a) First, to the payment of the costs and expenses of the Authority and the Trustee, if any, in carrying out the provisions of this ~~article~~ Article VIII, including reasonable compensation to its accountants and counsel; ~~and~~

(b) Second, to the payment of the entire principal amount of the unpaid Parity Installment Obligations and the unpaid principal amount of all other Parity Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable thereto in accordance with their respective terms. In the event there are insufficient Net System Revenues to pay the entire principal amount and accrued interest on all Parity Obligations, then accrued interest (and payments due to the counterparty to a Qualified Swap Agreement) shall first be paid and any remaining amount shall be paid on account of principal, and in the event there are insufficient Net System Revenues to fully pay either interest or principal in accordance with the foregoing, then payment shall be prorated within a priority based upon the total amounts due in the priority; and

(c) Third, to the payment of the entire principal amount of the unpaid Subordinated Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable thereto in accordance with their respective terms. In the event there are insufficient Net System Revenues to pay the entire principal amount and accrued interest on all Subordinated Obligations, then accrued interest shall first be paid and any remaining amount shall be paid on account of principal, and in the event there are insufficient Net System Revenues to fully pay either interest or principal in accordance with the foregoing, then payment shall be prorated within a priority based upon the total amounts due in the priority.

**SECTION 2.10.** Amendment of Section 10.02. Section 10.02 of the Agreement is hereby amended and restated to read as follows (additions noted by underline; deletions noted by strikethrough):

**SECTION 10.02. Benefits of Installment Purchase Agreement Limited to Parties.** Except with respect to the rights provided to the Owners of Subordinated Obligations contained in the penultimate paragraph of Section 8.01 hereof to enforce the provisions of this Installment Purchase Agreement, ~~Nothing~~ nothing contained herein, expressed or implied, is intended to give to any person other than the City, the Authority or the assigns of the Authority and any Credit Provider any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the City or the Authority shall be for the sole and exclusive benefit of the other party. Each party hereto agrees for the benefit of any counterparty to a Qualified Swap Agreement that covenants contained herein that are expressly applicable to such a counterparty, are also intended to benefit such counterparty and each such counterparty shall be deemed to be a third party beneficiary with respect thereto, entitled to enforce directly and in its own name any rights or claims it may have against such party and otherwise protect its rights hereunder.

### ARTICLE III

#### MISCELLANEOUS

**SECTION 3.1.** Applicability of the Agreement. Except as otherwise expressly provided in this First Amendatory Supplement, the provisions of the Agreement are hereby ratified, approved and confirmed.

**SECTION 3.2.** Interpretation. If any of the provisions of the Agreement conflict with the provisions of this First Amendatory Supplement, then the provisions of this First Amendatory Supplement shall control.

**SECTION 3.3.** Execution in Counterparts. This First Amendatory Supplement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

**SECTION 3.4.** Governing Law. This First Amendatory Supplement shall be construed and governed in accordance with the laws of the State of California.

**SECTION 3.5.** Severability. If any term or provision of this First Amendatory Supplement shall be determined to be ineffective, invalid, illegal or unenforceable, then all other terms and provisions of this First Amendatory Supplement shall nevertheless remain effective and shall be enforced to the fullest extent permitted by applicable Law.

**IN WITNESS WHEREOF**, this First Amendatory Supplement has been executed by the City and the Authority as of the year and date first above written.

**CITY OF SAN DIEGO**

By: \_\_\_\_\_  
Deputy City Manager

Attest:

By \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

City Attorney of the City of San Diego

By \_\_\_\_\_  
Deputy City Attorney

**PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO**

By: \_\_\_\_\_  
Chair

Attest:

By \_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

By \_\_\_\_\_  
\_\_\_\_\_

**AGREED TO AND CONSENT BY:**

**AMBAC ASSURANCE CORPORATION**

By: \_\_\_\_\_ -  
Name:  
Title:

**FINANCIAL GUARANTY INSURANCE COMPANY**

By: \_\_\_\_\_ -  
Name:  
Title: