
FIRST AMENDMENT DATED AS OF _____ 1, 2005
TO 2004 SUPPLEMENT DATED AS OF JUNE 1, 2004
TO MASTER INSTALLMENT PURCHASE AGREEMENT
DATED AS OF SEPTEMBER 1, 1993

Between

THE CITY OF SAN DIEGO

And

PUBLIC FACILITIES FINANCING AUTHORITY
OF THE CITY OF SAN DIEGO

Relating to

Public Facilities Financing Authority of the City of San Diego
Non-Transferable Subordinated Sewer Revenue Bonds, Series 2004
(Payable Solely From Series 2004 Subordinated Installment
Payments Secured by Wastewater System Net Revenues)

**FIRST AMENDMENT TO
2004 SUPPLEMENT TO THE MASTER
INSTALLMENT PURCHASE AGREEMENT**

This FIRST AMENDMENT TO 2004 SUPPLEMENT TO THE MASTER INSTALLMENT PURCHASE AGREEMENT, dated as of _____ 1, 2005 (this “First Amendment to 2004 Supplement”), is by and between the Public Facilities Financing Authority of the City of San Diego, a California joint exercise of powers entity (the “Authority”), and the City of San Diego, a municipal corporation duly organized and existing under the Charter and the Constitution of the State (the “City”), amending the 2004 Supplement dated as of June 1, 2004 supplementing the Master Installment Purchase Agreement dated as of September 1, 1993 by and between the City and the Authority (the Master Installment Purchase Agreement, as previously supplemented and amended by a 1993-1 Supplement dated as of September 1, 1993 (the “1993 Supplement”), a 1995-1 Supplement dated as of December 1, 1995 (the “1995 Supplement”), a 1997-1 Supplement dated as of February 1, 1997 (the “1997 Supplement”), a 1998-1 Supplement dated as of February 1, 1997 (the “1997 Supplement”), a 1998-1 Supplement dated as of September 1, 1998 (the “1998 Supplement”), a 1999-1 Supplement dated as of March 1, 1999 (the “1999 Supplement”), and a First Amendatory Supplement dated as of August 15, 2003, each by and between the City and the Authority (the “First Amendatory Supplement and, collectively, the “Agreement”).

WITNESSETH:

WHEREAS, pursuant to the Agreement, 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; and

WHEREAS, the City has determined that it is in its best interests and the best interests of its residents to finance additional Components of the Project, identified in the 2004 Supplement, and, in each case, to pay therefor with Series 2004 Subordinated Installment Payments pursuant to this First Amendment to 2004 Supplement, all in the manner described herein, and the Authority is willing to assist the City to effect such financing;

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

**ARTICLE 1
DEFINITIONS**

Section 1.1 Definitions Capitalized terms used in this First Amendment to 2004 Supplement but not defined herein have the meanings given those terms in the Agreement and, if any such terms are not defined in the Agreement, then such terms have the meanings given those terms in the Subordinated Indenture (as defined herein). As used in this First Amendment to 2004 Supplement, the following terms have the following meanings:

Agreement

The term “Agreement” means that certain Master Installment Purchase Agreement between the City and the Authority dated as of September 1, 1993, as originally executed, and as

amended and supplemented to date, and as it may be amended and supplemented from time to time in accordance with the terms thereof.

Series 2004 Subordinated Installment Payments

The term “Series 2004 Subordinated Installment Payments” means the Installment Payments specified in Section 3.1 hereof amending Section 4.1 of the 2004 Supplement which are to pay the Purchase Price of the 2004 Components.

Series 2004 Subordinated Bonds

The term “Series 2004 Subordinated Bonds” means the Public Facilities Financing Authority of the City of San Diego Non-Transferable Subordinated Sewer Revenue Bonds, Series 2004.

State Revolving Fund Loan

The term “State Revolving Fund Loan” means Agreement No. 01-809-550-0 by and between the State Water Resources Control Board (“SWRCB”) and the City, as such agreement may be modified or amended from time to time, provided that: at no time shall amounts outstanding thereunder exceed \$13,000,000, nor may any right to payment or lien, pledge or security interest in Net System Revenues made or granted thereunder be senior to the rights to payment or interests in Net System Revenues of the holders of the Series 2004 Subordinated Bonds.

Subordinated Indenture

The term “Subordinated Indenture” means the Indenture (Subordinated Bonds), dated as of June 1, 2004, by and between the Authority and Wells Fargo Bank, National Association, as trustee, relating to the issuance of the Series 2004 Subordinated Bonds and any Additional Subordinated Bonds issued thereunder, as originally executed and as it may be amended and supplemented from time to time in accordance with its terms.

2004 Components

The term “2004 Components” means the components for the Project specified in Exhibit A attached to the 2004 Supplement and by this reference made a part hereof, for which the City will be making Series 2004 Subordinated Installment Payments as hereinafter specified.

2004 Supplement

The term “2004 Supplement” means the 2004 Supplement to the Master Installment Purchase Agreement dated as of June 1, 2004 by and between the City and the Authority, supplementing the Agreement.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

Section 2.1 City Representations and Warranties

The City hereby represents and warrants to the Authority that each of the following is true and correct.

(a) The City is a municipal corporation organized and existing under the Charter, which was duly adopted pursuant to the provisions of the Constitution of the State of California.

(b) The City has full legal right power and authority to enter into this First Amendment to 2004 Supplement and perform its obligations hereunder, to carry out and consummate all transactions contemplated by this First Amendment to 2004 Supplement, and the City has complied with the provisions of the Law in all matters relating to such transactions.

(c) By proper action, the City has duly authorized the execution, delivery and performance of this First Amendment to 2004 Supplement.

(d) The execution and delivery of this First Amendment to 2004 Supplement and the consummation of the transactions herein contemplated will not (i) violate any provision of law, any order of any court or other agency of government; (ii) be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any provision of any indenture, material agreement or other instrument to which the City is now a party or by which it or any of its properties or assets is bound; or (iii) result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the City.

(e) The City has determined that it is necessary and proper for City uses and purposes within the terms of the Law that the City finance the acquisition of the 2004 Components in the manner provided for in this First Amendment to 2004 Supplement, in order to continue to provide essential services and facilities to the persons residing in the City.

(f) The City shall comply with all applicable Internal Revenue Service regulations and rulings to the effect that entry by the City into this First Amendment to 2004 Supplement will not cause interest components of Series 2004 Subordinated Installment Payments to be includable in the gross income of the owners of Series 2004 Subordinated Bonds for federal income tax purposes.

Section 2.2 Authority Representations and Warranties

The Authority hereby represents and warrants to the City that each of the following is true and correct:

(a) The Authority is a joint exercise of powers entity formed under the laws of the State of California.

(b) The Authority has full legal right, power and authority to enter into this First Amendment to 2004 Supplement and to carry out and consummate all transactions contemplated by this First Amendment to 2004 to Supplement.

(c) By proper action, the Authority has duly authorized the execution, delivery and due performance of this First Amendment to 2004 Supplement.

(d) The execution and delivery of this First Amendment to 2004 Supplement and the consummation of the transactions herein contemplated will not (i) violate any provision of Law, any order of any court or other agency of government; (ii) be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any provision of any indenture, material agreement or other instrument to which the Authority is now a party or by which it or any of its properties or assets is bound; or (iii) result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Authority.

(e) The Authority shall comply with all applicable Internal Revenue Service regulations and rulings to the effect that entry by the Authority into this First Amendment to 2004 Supplement will not cause the interest components of Series 2004 Subordinated Installment Payments to be includable in the gross income of the owners of Series 2004 Subordinated Bonds for federal income tax purposes.

ARTICLE 3

SERIES 2004 SUBORDINATED INSTALLMENT PAYMENTS

Section 3.1 Amendment to Section 4.1 of the 2004 Supplement

Section 4.1 of the 2004 Supplement is hereby amended to read as follows:

Section 4.1 Series 2004 Subordinated Installment Payments

In consideration of the payment, in whole or in part, by the Authority of the Purchase Price and the sale of the 2004 Component by the authority to the City pursuant to Section 3.3 hereof, the City hereby agrees to pay as Series 2004 Subordinated Installment Payments, solely from Net System Revenues as provided in the Agreement, the Interest Portion at the interest rates and on the dates as provided in the Subordinated Indenture and the Principal Portion then Outstanding as provided in the following table:

<u>Date</u>	<u>Principal Portion</u>
March 15, 2007	\$ 7,600,000
June 15, 2007	7,600,000
September 15, 2007	7,600,000
December 15, 2007	7,600,000
March 15, 2008	7,600,000
June 15, 2008	7,600,000
September 15, 2008	7,600,000

December 15, 2008	7,600,000
March 15, 2009	7,600,000
June 15, 2009	7,600,000
September 15, 2009	7,600,000
December 15, 2009	7,600,000
March 15, 2010	7,600,000
June 15, 2010	7,600,000
September 15, 2010	7,600,000
December 15, 2010	7,600,000
March 15, 2011	7,600,000
June 15, 2011	7,600,000
September 15, 2011	7,600,000
December 15, 2011*	7,600,000

*Maturity

ARTICLE 4

ADDITIONAL COVENANTS

Section 4.1 Additional Covenant relating to Tax Exemption

The City reaffirms its covenants relating to tax exemption in Section 6.1 of the 2004 Supplement, and such covenants are incorporated herein by this reference to the same effect as if set out fully.

Section 4.2 Amendment to Section 6.3 of the 2004 Supplement

Section 6.3 of the 2004 Supplement is hereby amended to read as follows:

Section 6.3. No Issuance of New Obligations while the Series 2004 Subordinated Bonds are Outstanding

The City hereby covenants with the Owner of the Series 2004 Subordinated Bonds that so long as any of its Series 2004 Subordinated Installment Payments shall be Outstanding, it will not issue any new Obligations under the Agreement, except for Obligations constituting the State Revolving Fund Loan, provided however, that the City shall be permitted to issue new Obligations if the proceeds of such Obligations prepay in full the Outstanding Series 2004 Subordinated Installment Payments.

IN WITNESS WHEREOF, this First Amendment to 2004 Supplement has been executed by the City and the Authority as of the year and date first above written.

CITY OF SAN DIEGO

By: _____
City Treasurer

Attest:

City Clerk

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

By: _____
Chair

Attest:

Secretary

APPROVED AS TO FORM:
MICHAEL AGUIRRE
City Attorney of the City of San Diego

By: _____
Deputy City Attorney

AGREEMENT, ACCEPTANCE AND CONSENT BY OWNER

Bank of America, N.A. as Owner of all of the Series 2004 Subordinated Bonds hereby agrees, accepts and consents to the amendments to the Series 2004 Subordinate Installment Payments and the 2004 Supplement affected by this First Amendment to 2004 Supplement.

BANK OF AMERICA, N.A., as Owner

By: _____
Authorized Officer