



RESOLUTION

AMENDING RESOLUTION NO. 98-195, CD1

BE IT RESOLVED by the City Council of the City and County of Honolulu, Hawaii (the "City Council"), as follows:

ARTICLE I

RESOLUTION AMENDING RESOLUTION NO. 98-195, CD1; FINDINGS AND DETERMINATIONS; AND DEFINITIONS

Section 1.01. Amendment to Resolution No. 98-195, CD1; Findings and Determinations. (1) This resolution amends Resolution No. 98-195, CD1 duly adopted by the City Council on November 10, 1998 (the "Resolution").

(2) It is hereby found and determined by the City Council as follows: (i) that it is necessary and desirable that Sections 3.04(A), 3.04(B) and 10.02 of the Resolution be amended to provide clarity in the requirements for the issuance of future Bonds by the City Council; (ii) Section 10.02 of the Resolution provides that with the consent of the Holders of not less than a majority of the Bonds then Outstanding, the City and County at any time may adopt a resolution amending the Resolution for the purpose of modifying or amending in any manner the rights of the Holders of the Bonds then Outstanding; and (iii) the amendments provided herein are necessary and desirable and are in the best interests of the City and County and the users of the Wastewater System.

Section 1.02. Definitions. (1) All terms which are defined in Section 1.01 of the Resolution shall have the same meanings, respectively, in this Resolution as such terms are given in said Section 1.01 of the Resolution.

(2) In addition, as used in this Resolution, unless the context shall otherwise require, the following terms shall have the following respective meanings:

"LIBOR" means the offered rate for deposits in U.S. dollars for a one-month period which appears on the Telerate Page 3750 at approximately 11:00 a.m., London time, on such date, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market.

BFSAMEND RES 98-195, CD1.R06



## RESOLUTION

### ARTICLE II

#### AMENDMENT TO THE RESOLUTION

Section 2.01. ***Amendment of Section 3.04(A)***. Section 3.04(A) of the Resolution is hereby amended to read in its entirety as follows:

(A) One or more Series of Bonds, exclusive of Refunding Bonds issued pursuant to Section 3.06, may be issued hereunder at any time and from time to time for any lawful use or purpose relating to the Wastewater System, including, without limitation, payment of all or a portion of the Costs of Improvement, but only upon compliance as to each such Series with the provisions of **Section 3.03** and upon delivery to the Director of Budget and Fiscal Services of the following documents or moneys or securities, all of which documents shall be dated or certified, as the case may be, as of the date of such delivery to the Director of Budget and Fiscal Services:

(1) A certified copy of the Series Resolution authorizing the issuance of the Bonds of such Series.

(2) A certified copy of the Series Certificate, if any, executed in connection with such Bonds.

(3) A Written Request of the City and County as to the delivery of such Bonds, describing the Bonds to be delivered, designating the purchaser or purchasers to whom such Bonds are to be delivered, and stating the consideration for such Bonds.

(4) A Written Certificate of the City and County stating the amount required to be in the Common Reserve Subaccount after issuance of the Bonds then to be issued, and that after deposit in the Common Reserve Subaccount of the amount, if any, to be deposited therein in connection with the issuance of such Bonds, the amounts on deposit in the Common Reserve Subaccount will not be less than the Common Reserve Subaccount Requirement.

(5) A Written Certificate of the City and County stating the amount required to be in the Separate Series Reserve Subaccount created, if any, to provide additional security for the Bonds of such Series after issuance of the Bonds then to be issued, and that after deposit in such Separate Series Reserve Subaccount of the amount to be deposited therein in connection with the issuance of such Bonds, the amounts on deposit in such Separate Series Reserve Subaccount will not be less than the Separate Series Reserve Subaccount Requirement for such Separate Series Reserve Subaccount.



## RESOLUTION

---

(6) Except in the case of Refunding Bonds, a Written Certificate of the City and County stating that the City and County is not, and, as a result of the issuance of such Bonds, shall not be, in default in the performance of any of the covenants, conditions, agreements or provisions contained herein.

(7) If any Bonds of such Series are Option Bonds, a Support Facility in such an amount as would provide sufficient moneys for the purchase or redemption of all Option Bonds of such Series if the Holders thereof elected to tender for purchase or redemption the entire aggregate Outstanding principal amount of the Option Bonds of such Series.

(8) Unless the Director of Budget and Fiscal Services is a party thereto, a copy of the agreement, if any, between the City and County and the Depository for such Bonds.

(9) An opinion of Bond Counsel to the effect that: (a) the Resolution, including the applicable Series Resolution authorizing the Series of Bonds, has been duly and lawfully adopted by the City Council and is a valid and legally binding instrument of the City and County, enforceable in accordance with the terms thereof; (b) the Resolution creates a valid pledge and lien which it purports to create of the Net Revenues, moneys, securities and funds held or set aside under the Resolution, subject to the application thereof to the purposes and on the terms and conditions permitted by the Resolution; and (c) the Bonds of such Series are valid and legally binding limited special obligations of the City and County, enforceable in accordance with the terms thereof, are entitled to the benefits of the Resolution and the Act, have been duly and validly authorized, issued and authenticated in accordance with law and the Resolution, and do not violate the provisions of the Resolution.

(10) Either (I) a Written Certificate of the City and County based: (i) on audited figures or (ii) to the extent audited figures are not available, on figures taken by an independent certified public accountant from the Department's books and records, showing that the Net Revenues for: (a) the most recent Fiscal Year, or (b) any consecutive twelve (12) months' period out of twenty-four (24) months immediately preceding the month in which such Bonds are issued were not less than [the greater of: (x) the sum of (1) the maximum of the sum of the Aggregate Debt Service (as defined in the First Bond Resolution) on all First Resolution Obligations issued and outstanding under and pursuant to the First Bond Resolution and the Aggregate Debt Service on all Bonds then Outstanding and on the proposed Series of Bonds in any Fiscal Year and the twelve (12) month period selected and (2) the Required Deposits for such Fiscal Year or the twelve (12) month period selected; and (y)] the sum of (1) 1.10 times the maximum of



## RESOLUTION

the sum of the Aggregate Debt Service (as defined in the First Bond Resolution) on all First Resolution Obligations issued and outstanding under and pursuant to the terms of the First Bond Resolution and the Aggregate Debt Service on all Bonds then Outstanding and on the proposed Series of Bonds in any Fiscal Year [and the twelve (12) month period selected,] and (2) 1.00 times the aggregate Support Facility Reimbursement Obligations outstanding under the First Bond Resolution and this Resolution as of the date of the Written Certificate of the City and County, or (II) a Written Certificate of the City and County or Certificate of the Consulting Engineer that the Net Revenues to be derived in each of the five (5) Fiscal Years following the earlier of: (i) the end of the period during which interest is capitalized or, if no interest is to be capitalized, the Fiscal Year in which the proposed Series of Bonds are issued, and (ii) the date on which substantially all Improvements to be financed with the proceeds of the proposed Series of Bonds are expected to commence operations, or, if the proceeds of such Series of Bonds will not be used to fund the Costs of Improvements, the Fiscal Year in which the proposed Series of Bonds are issued, are estimated to be not less than [the greater of: (x) the sum of (1) the maximum of the sum of the Aggregate Debt Service (as defined in the First Bond Resolution) on all First Resolution Obligations issued under and pursuant to the First Bond Resolution and the Aggregate Debt Service on all Bonds then Outstanding and on the proposed Series of Bonds in any such Fiscal Year, and (2) the Required Deposits for any such Fiscal Year; and (y)] the sum of (1) 1.10 times the maximum of the sum of the Aggregate Debt Service (as defined in the First Bond Resolution) on all First Resolution Obligations issued under and pursuant to the First Bond Resolution and the Aggregate Debt Service on all Bonds then Outstanding and on the proposed Series of Bonds in any such Fiscal Year, and (2) 1.00 times the aggregate Support Facility Reimbursement Obligations outstanding under the First Bond Resolution and this Resolution as of the date of such Written Certificate of the City and County or certificate of the Consulting Engineer, as the case may be (the "Additional Bonds Requirement").

(11) Such further documents, moneys and securities as are required by the provisions of any Series Resolution or Series Certificate.

(12) The provisions of paragraphs (6) and (10) of this subsection (A) of this **Section 3.04** shall not apply to the initial Series of Bonds issued pursuant to the Resolution, unless or except as is otherwise set forth in the Series Resolution authorizing the issuance thereof.

Section 2.02. **Amendment of Section 3.04(B)**. Section 3.04(B) of the Resolution is hereby amended to read in its entirety as follows:



RESOLUTION

(B) In determining Debt Service on Variable Rate Bonds then Outstanding and Variable Rate Bonds then proposed to be issued for purposes of the Additional Bonds Requirement, the interest rate shall be calculated as: (i) if any Variable Rate Bonds are then Outstanding and have been Outstanding for at least twenty-four (24) months, the [highest] average interest rate borne by such Variable Rate Bonds [for any 30-day] over the preceding twelve (12) month period, or (ii) if no such Variable Rate Bonds are then Outstanding, [the Revenue Bond Index] (a) for the proposed Variable Rate Bonds that are Tax-exempt Bonds, the average interest rate of the Revenue Bond Index over the preceding twelve (12) month period at the time of calculation, and (b) for the proposed Variable Rate Bonds that are not Tax-exempt Bonds, the average interest rate of LIBOR over the preceding twelve (12) month period at the time of calculation.

Section 2.03. Amendment of Section 10.02. Section 10.02 of the Resolution is hereby amended to read in its entirety as follows:

(A) With the consent of the Holders of not less than a majority of the Bonds then Outstanding and with written consent of each Support Facility Provider, the City and County from time to time and at any time may adopt a resolution amendatory hereof or supplemental hereto (herein also defined and referred to as a "Supplemental Resolution") for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, the Resolution, or modifying or amending the rights and obligations of the City and County hereunder, or modifying or amending in any manner the rights of the Holders of the Bonds then Outstanding; *provided, however, that without*. For purposes of the preceding sentence, the written consent of each Support Facility Provider providing a Support Facility for any Bonds shall constitute consent of the Holders of such Bonds.

(B) Without the specific consent of the Holder of each such Bond which would be affected thereby, no Supplemental Resolution amending or supplementing the provisions hereof shall: (1) change the fixed maturity date for the payment of the principal of any Bond or the dates for the payment of interest thereon or the terms of the redemption thereof, or reduce the principal amount of any Bond or the rate of interest thereon or the Redemption Price (or the redemption premium) payable upon the redemption or prepayment thereof; or (2) reduce the aforesaid percentage of Bonds, the Holders of which are required to consent to any Supplemental Resolution amending or supplementing the provisions of the Resolution; or (3) give to any Bond or Bonds any preference over any other Bond or Bonds secured hereby; or (4) authorize the creation of any pledge of the Revenues and other moneys pledged hereunder, prior, superior or equal to the pledge of and lien and charge thereon created herein for the payment of the Bonds except to the extent provided in **Article III** hereof; or (5) deprive any Holder of the Bonds in any material respect of the security afforded by the Resolution; *provided further, however, that without* the specific consents of the Holders of not less than a



## RESOLUTION

majority in principal amount of the Term Bonds then Outstanding and affected thereby, no Supplemental Resolution amending or supplementing the provisions of the Resolution shall (a) change the amount of any Sinking Fund Installments for the retirement of Term Bonds or the due dates of such installments or the terms for the purchase or redemption thereof from such installments, or (b) reduce the aforesaid percentage of Term Bonds, the Holders of which are required to consent to any such Supplemental Resolution. (Nothing in this paragraph contained, however, shall be construed as making necessary the approval of the Holders of the Bonds of the adoption of any Supplemental Resolution authorized by the provisions of **Section 10.01.**) A modification or amendment of the provisions of **Article VI** with respect to the Sewer Fund or the Debt Service Subaccount or Common Reserve Subaccount or any Separate Series Reserve Subaccount or, after there are no longer any bonds outstanding under the First Bond Resolution, a modification or amendment to change the designation of Funds, Accounts or Subaccounts and to incorporate the applicable provisions of the First Bond Resolution herein, therein shall not be deemed a change in the terms of payments; *provided* that no such modification or amendment shall, except upon the consent of the Holders of all Bonds then outstanding affected thereby, reduce the amount or amounts required to be credited to the Debt Service Subaccount or Common Reserve Subaccount or any Separate Series Reserve Subaccount or their respective successor.

(~~[B]~~ C) The proof of the giving of any consent of any Holder required by this Section and of the holding of Bonds for the purpose of giving consents shall be made in accordance with the provisions of **Article XI**. It shall not be necessary that the consents of the Holders of the Bonds approve the particular form of wording of the proposed amendment or supplement or of the Supplemental Resolution affecting such amendment or supplement, but it shall be sufficient if such consents approve the substance of the proposed amendment or supplement. [After the Holders of the required percentage of Bonds shall have filed their consents to the amending or supplementing hereof pursuant to this Section, the City and County shall publish at least once a notice of such amending or supplementing hereof, in *The Bond Buyer*, published in New York, New York, or in lieu of publication in *The Bond Buyer*, in some other newspaper specializing in financial matters printed in the English language and customarily published on each business day and of general circulation in the City of New York, New York, or in a newspaper of general circulation printed in the English language of general circulation in the State, and shall mail a copy of such notice, postage prepaid to each registered Holder of Bonds then Outstanding, at his address, if any, appearing upon the registry books, but failure to mail copies of said notice to any of said Holders shall not affect the validity of the Supplemental Resolution effecting such amendments or supplements or the consent thereto.] (Nothing in this paragraph contained, however, shall be construed as requiring the giving of notice of any amending or supplementing of the Resolution authorized by **Section 10.01.**) A record,



## RESOLUTION

---

consisting of the papers required by this Section, shall be proof of the matters therein stated until the contrary is proved. No action or proceeding to set aside or invalidate such Supplemental Resolution or any of the proceedings for its adoption shall be instituted or maintained unless such action or proceeding is commenced within sixty (60) days after the publication of the notice required by this paragraph.

([C] D)The City and County shall furnish a notice of each amendment or supplement made pursuant to this **Section 10.02** and a copy of the Supplemental Resolution effecting such amendment or supplement to each Rating Agency which has rated the Bonds at least fifteen (15) days prior to the effective day of the Supplemental Resolution.

### ARTICLE III

#### EFFECTIVENESS OF THIS AMENDMENT TO RESOLUTION; AND EFFECTIVENESS OF OTHER PROVISIONS

Section 3.01. **Effectiveness of this Amendment to Resolution; Effectiveness of Other Provisions.** (1) The resolution amending the Resolution shall become effective upon the filing of written consents to the amendments set forth herein of the Holders of not less than a majority of the Bonds then Outstanding.

(2) Except as amended hereby, all of the other provisions of the Resolution shall continue to be effective as the Resolution was originally adopted.

(3) Resolution material to be repealed is bracketed. New material is underscored.



RESOLUTION

BE IT FURTHER RESOLVED by the Council of the City and County of Honolulu that the Clerk be and is directed to transmit copies of this resolution to Ms. Mary Patricia Waterhouse, Director of Budget and Fiscal Services, and Ms. Edlyn S. Taniguchi, Chief of Treasury.

INTRODUCED BY

*[Handwritten signature]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE OF INTRODUCTION:

JUL 20 2006

Honolulu, Hawaii

Councilmembers