

**CITY OF SAN JOSE FINANCING AUTHORITY
RESOLUTION NO. _____**

A RESOLUTION OF THE CITY OF SAN JOSE FINANCING AUTHORITY APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENTS TO CERTAIN FINANCING DOCUMENTS, INCLUDING AN AMENDMENT TO A LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT, AND AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION WITH THE CITY OF SAN JOSE FINANCING AUTHORITY LEASE REVENUE COMMERCIAL PAPER NOTES IN ORDER TO INCREASE THE NOT-TO-EXCEED AGGREGATE PRINCIPAL AMOUNT THEREOF TO \$175,000,000 AND TO EXTEND THE STATED EXPIRATION DATE AND COMMITMENT AVAILABLE UNDER SUCH LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT, AND AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF ONE OR MORE ADDITIONAL EXTENSIONS TO THE LETTER OF CREDIT ISSUED UNDER SUCH LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT OR THE COMMITMENT AVAILABLE THEREUNDER BASED ON SUBSTANTIALLY THE SAME TERMS AND CONDITIONS FOR A DURATION OF TIME THAT THE DESIGNATED OFFICERS DEEM NECESSARY, ADVISABLE OR PRUDENT, PROVIDED THAT NO SUCH EXTENSION SHALL REQUIRE AN ANNUAL FEE IN EXCESS OF 1.00% OF THE COMMITMENT AVAILABLE THEREUNDER

WHEREAS, the City of San José (the “City”) and the former Redevelopment Agency of the City of San José (the “Former Agency”) have heretofore entered into a Joint Exercise of Powers Agreement establishing the City of San José Financing Authority (the “Authority”) for the purpose, among others, of having the Authority issue its instruments of debt to finance the acquisition, construction and improvement of certain public capital improvements; and

WHEREAS, the Former Agency, as of February 1, 2012, has been dissolved and the City has become the successor agency of the Former Agency pursuant to Part 1.85 of Division 24 of the California Health and Safety Code and per California Health and Safety Code Section 34178(b)(3), the joint exercise of powers agreement establishing the Authority remains in effect; and

WHEREAS, the Authority has heretofore determined to adopt and implement a commercial paper program under which the Authority will provide financing for certain public capital improvements for the City; and

WHEREAS, on January 28, 2004, pursuant to a Trust Agreement dated as of January 1, 2004 (the "Original Trust Agreement"), between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Act"), the Authority delivered its first issue of its not to exceed \$98,000,000 Tax-Exempt Lease Revenue Commercial Paper Notes (the "Tax-Exempt Commercial Paper Notes"); and

WHEREAS, concurrently with the delivery of the first issue of the Tax-Exempt Commercial Paper Notes, the Authority and the City entered into a Site Lease, dated as of January 1, 2004 (the "Site Lease"), pursuant to which the Authority leased from the City certain Property (as such term is defined therein) located in the City, including the buildings and improvements thereon owned by the City; and

WHEREAS, concurrently with the delivery of the first issue of the Tax-Exempt Commercial Paper Notes, the Authority and the City also entered into a Sublease, dated as of January 1, 2004 (the "Sublease"), pursuant to which the City subleased the Property from the Authority; and

WHEREAS, on November 9, 2004, the Authority and the City adopted resolutions, after a duly held public hearing, approving using proceeds of the Commercial Paper Notes to finance the installation and integration of computer software, software licensing, hardware and certain related costs related to the City's billing system previously referred to as the "Integrated Utility Billing, Customer Service and Performance Management System" and currently known as the "Utility Billing System Project"; and

WHEREAS, the City, in order to increase its flexibility with respect to a portion of the Projects, requested that, pursuant to the Act, the Authority issue its City of San José Financing Authority Taxable Lease Revenue Commercial Paper Notes (the "Taxable Commercial Paper Notes"); and

WHEREAS, in order to aid the City, the Authority determined to amend and restate the Original Trust Agreement and to amend certain related documents in order to provide for the issuance of its Taxable Commercial Paper Notes as well as its Tax-Exempt Commercial Paper Notes (collectively, the "Commercial Paper Notes"); and

WHEREAS, on June 23, 2005, the Authority and the Trustee entered into an Amended and Restated Trust Agreement (the "Amended and Restated Trust Agreement" and, as further amended as described herein, the "Trust Agreement") in order to provide for the issuance of Taxable Commercial Paper Notes; and

WHEREAS, on November 17, 2005, the Authority and the Trustee entered into a First Supplement to Amended and Restated Trust Agreement (the “First Supplement”) in order to increase the not-to-exceed maximum aggregate principal amount of Commercial Paper Notes from \$98,000,000 to \$116,000,000, and also to allow the additional use of the Commercial Paper Notes to finance the City’s Central Service Yard Phase II Project and the demolition and clean up at the City’s Main Service Yard; and

WHEREAS, on May 22, 2007, the Authority and the City adopted resolutions, after a duly held public hearing, approving using proceeds of Taxable Commercial Paper Notes to pay for the cost of improvements to the City-owned HP Pavilion and related costs; and

WHEREAS, on October 21, 2008, the Authority and the City adopted resolutions approving amending the Amended and Restated Trust Agreement pursuant to a Second Supplement to the Amended and Restated Trust Agreement (the “Second Supplement”) in order to expand the Authority’s ability to issue Commercial Paper Notes for the purpose of refunding bonds and other obligations of the City or the Authority pursuant to Government Code Sections 53570 et seq. and 53580 et seq.; and

WHEREAS, on April 20, 2010, the Authority and the City adopted resolutions approving amending the Amended and Restated Trust Agreement pursuant to a Third Supplement to the Amended and Restated Trust Agreement (the “Third Supplement”) in order to expand the Authority’s ability to issue Commercial Paper Notes for the purposes of (i) financing certain low and moderate income housing activities and programs of the City by allowing the proceeds of the Commercial Paper Notes to be loaned to the Low and Moderate Income Housing Fund established under and pursuant to the Community Redevelopment Law, which fund is administered by the City, all as permitted by the Act, including Section 6588(c) thereof, and (ii) making working capital advances to the City in order to allow the City to meet its cash flow needs; and

WHEREAS, in connection with the Reimbursement Agreements (as defined below) and in order to aid the City, the Authority entered into the Fourth Supplement to Amended and Restated Trust Agreement (the “Fourth Supplement”) dated as of February 1, 2013, in order to provide for the delivery of two Alternate Credit Facilities (as defined in the Amended and Restated Trust Agreement) in accordance with Section 6.02 of the Amended and Restated Trust Agreement and to designate separate series of Commercial Paper Notes consisting of the Authority’s Tax-Exempt Lease Revenue Commercial Paper Notes, Series 1 (the “Series 1 Notes”), Taxable Lease Revenue Commercial Paper Notes, Series 1-T (the “Series 1-T Notes”), Tax-Exempt Lease Revenue Commercial Paper Notes, Series 2 (the “Series 2 Notes”), and Taxable Lease Revenue Commercial Paper Notes, Series 2-T (the “Series 2-T Notes”); and

WHEREAS, on February 12, 2013, in connection with the Reimbursement Agreements and the Fourth Supplement, the Authority and the City adopted resolutions that, in

addition to approving the Fourth Supplement, approved a Fourth Amendment to Site Lease (the "Fourth Amendment to Site Lease") and a Fourth Amendment to Sublease (the "Fourth Amendment to Sublease") in order to add certain real property, being the Police Communications Center and Fire Station #3, to the property leased pursuant to the Site Lease and the Sublease, and to release the Tech Museum from the property leased pursuant to the Site Lease and the Sublease; and

WHEREAS, the resolutions adopted on February 12, 2013, authorized the Authority and the City to negotiate and enter into a new Letter of Credit and Reimbursement Agreement, dated as of February 1, 2013, among the Authority, the City and State Street Bank and Trust Company (the "State Street Reimbursement Agreement") and a Letter of Credit and Reimbursement Agreement, dated as of February 1, 2013, among the Authority, the City and U.S. Bank National Association (the "U.S. Bank Reimbursement Agreement" and together with the State Street Reimbursement Agreement, the "Reimbursement Agreements"), and to execute amendments to various documents in connection with the execution and delivery of the Reimbursement Agreements, including reducing the not-to-exceed maximum aggregate principal amount of Commercial Paper Notes from \$116,000,000 to \$85,000,000; and

WHEREAS, to support the payment of principal and interest on the Series 1 Notes and the Series 1-T Notes, State Street Bank and Trust Company issued a letter of credit (the "State Street Letter of Credit") pursuant to the State Street Reimbursement Agreement; and

WHEREAS, to support the payment of principal and interest on the Series 2 Notes and the Series 2-T Notes, U.S. Bank National Association issued a letter of credit (the "U.S. Bank Letter of Credit") pursuant to the U.S. Bank Reimbursement Agreement; and

WHEREAS, on June 17, 2014, the Authority and the City adopted resolutions authorizing approval of a Fifth Amendment to the Site Lease (the "Fifth Amendment to Site Lease"), a Fifth Amendment to the Sublease (the "Fifth Amendment to Sublease"), and other related actions in order to provide for the addition of certain real property, being the Tech Museum, to the property currently leased pursuant to the Site Lease and the Sublease; and

WHEREAS, on August 29, 2017, the Authority and the City adopted resolutions approving amending the Amended and Restated Trust Agreement pursuant to a Fifth Supplement to the Amended and Restated Trust Agreement (the "Fifth Supplement") in order to expand the Authority's ability to issue Commercial Paper Notes for the purposes of financing start-up costs relating to the City's establishment of a community choice aggregation program for the provision of electrical power within the City's boundaries with the proposed name "San José Clean Energy", including capitalized interest and certain related costs in an amount not to exceed \$10,000,000, all as permitted by the Act,

including Section 6588(c) thereof, and has heretofore established the Clean Energy Program; and

WHEREAS, on February 13, 2018, the Authority and the City adopted resolutions allowing the additional use of the Commercial Paper Notes in order to assist the City with the funding of flood recovery construction projects for parks and community facilities (the “Parks Flood Recovery Projects”) in an amount not to exceed \$21,000,000; and

WHEREAS, on August 14, 2018, the Authority and the City adopted resolutions (i) allowing the additional use of the Commercial Paper Notes in order to assist the City with financing the purchase of certain real property in the City commonly known as the San José Convention Center South Hall and payment of certain related costs (the “South Hall Acquisition Project”) in an amount not to exceed \$47,000,000, and (ii) approving and authorizing the execution and delivery of amendments to certain financing documents including the Sixth Supplement to the Amended and Restated Trust Agreement (the “Sixth Supplement”), the Sixth Amendment to the Sublease (the “Sixth Amendment to Sublease”), and amendments to the Reimbursement Agreements and the associated fee letters to increase the commitments available under the Reimbursement Agreements to the aggregate principal amount of \$125,000,000 and to extend the stated expiration dates of the State Street Letter of Credit and U.S. Bank Letter of Credit from November 30, 2018 to February 23, 2022; and

WHEREAS, on January 12, 2021, the Authority and the City adopted resolutions approving the issuance of Commercial Paper Notes in order to provide a temporary bridge financing tool for the construction of the Fire Department Training Center (“FDTC”) and Emergency Operations Center (“EOC”) as a joint facility located in the vacant lot at 1591 Senter Road at the southwest corner of East Alma Avenue and Senter Road (together the “FDTC/EOC Project”), in an amount not to exceed \$23,400,000; and

WHEREAS, on June 22, 2021, the Authority and the City adopted resolutions to (i) reduce the total amount of Commercial Paper Notes authorized for the purpose of funding the Parks Flood Recovery Projects from \$21,000,000 to \$13,194,000, and (ii) effective on the date Authority issues lease revenue bonds the net proceeds of which are used to finance the FDTC are not less than \$19,200,000 (the “FDTC Lease Revenue Bonds”), reduce the amount of Commercial Paper Notes authorized to be issued for the purpose of funding the FDTC/EOC Project from \$23,400,000 to \$4,200,000 with the remaining authorized Commercial Paper Notes authorized only for the purpose of funding the EOC; and

WHEREAS, the resolutions adopted by the Authority and the City on June 22, 2021, also approved the issuance of Commercial Paper Notes by the Authority to finance the costs of purchasing power and other operating costs of the Clean Energy Program in an amount not to exceed \$95,000,000 effective as follows: (i) an amount not to exceed \$32,651,000 effective on June 22, 2021; (ii) an additional amount not to exceed \$19,200,000 effective on the date the Authority issues the FDTC Lease Revenue Bonds; and (iii) an additional

amount not to exceed \$43,149,000 effective from time to time, in whole or in part, as (a) outstanding Commercial Paper Notes are paid at maturity with available funds of the City, including proceeds of any lease revenue bonds, other than proceeds of additional Commercial Paper Notes, and (b) as the maximum principal amount of Commercial Paper Notes that may be issued is increased above \$125,000,000; and

WHEREAS, in addition to the actions described above, the Authority and the City have previously authorized the issuance of Commercial Paper Notes to finance various City projects and other actions related to the maintenance of the Authority's lease revenue commercial paper program; and

WHEREAS, the maximum principal amount of Commercial Paper Notes that may currently be outstanding is \$125,000,000; and

WHEREAS, the Authority now desires to further amend the Amended and Restated Trust Agreement pursuant to a Seventh Supplement to the Amended and Restated Trust Agreement (the "Seventh Supplement") and, pursuant to Section 7.02 of the Trust Agreement and Section 19 of the Sublease, to further amend the Sublease pursuant to a Seventh Amendment to Sublease (the "Seventh Amendment to Sublease"), in order to (i) increase the maximum principal amount of Series 2 Notes and Series 2-T Notes that may be outstanding to \$175,000,000, in each case supported solely by the U.S. Bank Letter of Credit, and (ii) reduce the maximum principal amount of Series 1 Notes and Series 1-T Notes that may be outstanding to zero dollars; and

WHEREAS, pursuant to Section 2.10(a) of the U.S. Bank Reimbursement Agreement, the City, the Authority, and U.S. Bank National Association, desire to execute an amendment to the U.S. Bank Reimbursement Agreement (the "Fourth Amendment to U.S. Bank Reimbursement Agreement") to increase the commitment available under the U.S. Bank Reimbursement Agreement to the aggregate principal amount of \$175,000,000 and to extend the stated expiration date of the U.S. Bank Letter of Credit to March 24, 2025, and to execute a fee letter in connection therewith; and

WHEREAS, the U.S. Bank Letter of Credit will continue to support only the payment of principal and interest on the Series 2 Notes and Series 2-T Notes; and

WHEREAS, contemporaneous with the execution and delivery of the Seventh Supplement and the Seventh Amendment to Sublease, the State Street Letter of Credit will be terminated by the Authority and the City, and the State Street Letter of Credit will be of no further force or effect thereafter; and

WHEREAS, the Governing Board (the "Board") of the Authority has duly considered such transactions and wishes at this time to approve said transactions in the public interests of the Authority;

NOW, THEREFORE, BE IT RESOLVED, by the Governing Board of the City of San José Financing Authority as follows:

SECTION 1. The Board hereby approves the Authority's and the Trustee's execution and delivery of the Seventh Supplement, and the Authority's execution and delivery of the Seventh Amendment to Sublease and the Fourth Amendment to U.S. Bank Reimbursement Agreement, in the forms posted to the agenda webpage for this joint meeting of the Authority and the City together with such additions thereto and changes therein as the Executive Director, the Treasurer, the Secretary and any and all other officers of the Authority, and any officer of the City designated by the Executive Director (collectively, the "Designated Officers"), each acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney, as counsel to the Authority. The Designated Officers, each acting alone, are further authorized to negotiate, execute and deliver one or more additional extensions to the U.S. Bank Letter of Credit or the commitment available under the U.S. Bank Reimbursement Agreement based on substantially the same terms and conditions for a duration of time that they deem necessary, advisable or prudent, provided that no such extension shall require an annual fee in excess of 1.00% of the commitment available under the U.S. Bank Reimbursement Agreement without the approval of this Board.

SECTION 2. The Designated Officers, are each hereby authorized, acting alone, for and in the name of and on behalf of the Authority, to do any and all things and take any and all actions, including execution and delivery of any and all documents, assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and sale of the Commercial Paper Notes and the consummation of the transactions as described herein, including without limitation, such documents, amendments, assignments, certificates and agreements as may be required by the Trust Agreement, the Reimbursement Agreements, the Dealer Agreement, the Issuing and Paying Agent Agreement, the Sublease or the Site Lease (as such terms are defined in the Trust Agreement) including, without limitation, the fee letter associated with the U.S. Bank Reimbursement Agreement. Further, the Designated Officers, each acting alone, are each hereby authorized to execute certificates as to arbitrage and any and all other necessary certificates or forms to ensure the continued tax exempt status of the Tax-Exempt Commercial Paper Notes.

Any authority delegated under this Resolution to a specified official (including officials acting in these positions on an interim basis) may also be exercised by the specified official's authorized designee.

ADOPTED this ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Chair, City of San José Financing Authority

ATTEST:

TONI J. TABER, CMC
Secretary, City of San José Financing Authority