

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A THIRD AMENDMENT TO CREDIT AGREEMENT AND A THIRD AMENDED AND RESTATED FEE LETTER AGREEMENT WITH WELLS FARGO BANK, NATIONAL ASSOCIATION RELATED TO THE ISSUANCE BY THE CITY OF SAN JOSE FINANCING AUTHORITY OF ITS SUBORDINATE WASTEWATER REVENUE NOTES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$300,000,000 OUTSTANDING AT ANY ONE TIME FOR THE PURPOSE OF FINANCING OR REFINANCING WASTEWATER SYSTEM AND TREATMENT PLANT PROJECTS TO REVISE THE CALCULATION OF INTEREST AND FEES FOR THE NOTES AND MAKE OTHER RELATED CHANGES AND AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION THEREWITH**

**WHEREAS**, the City of San José (the “City”) and the Redevelopment Agency of the City of San José (the “Agency”) have heretofore entered into a Joint Exercise of Powers Agreement (the “Joint Powers Agreement”) establishing the City of San José Financing Authority (the “Authority”) for the purpose, among others, of assisting the City in its financing needs; and

**WHEREAS**, the City is empowered by its charter to own, operate and maintain systems, plants, buildings, works and other facilities for the collection, treatment and disposal of sewage, waste and storm water, including sewage treatment and disposal plants and works and facilities in connection therewith; and

**WHEREAS**, pursuant to such authority, the City owns and operates its wastewater collection and conveyance system (the “Wastewater System”); and

**WHEREAS**, pursuant to such authority, on May 6, 1959, the City and the City of Santa Clara entered into that certain Agreement Between San José and Santa Clara Respecting Sewage Treatment Plant regarding the ownership, operation, maintenance and use of the existing wastewater treatment plant formally known as the “San Jose-Santa Clara Water Pollution Control Plant” and currently known as the “San José-Santa Clara Regional Wastewater Facility” (the “Treatment Plant”); and

**WHEREAS**, pursuant to such authority, the City has determined to finance and refinance the acquisition, construction and installation from time to time of certain

improvements, additions, and betterments to, and extensions and replacements of, the Wastewater System and certain improvements to, and rehabilitations and replacements of, the Treatment Plant (collectively, the “Projects”); and

**WHEREAS**, pursuant to Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “Act”), the Joint Powers Agreement, and Section 53580 et seq. of the Government Code of the State of California (the “Refunding Revenue Bond Law”), the Authority is authorized to issue revenue bonds, notes or other evidences of indebtedness for the purposes of, among other things, financing the acquisition, construction and installation of the Projects and refunding any bonds, notes or other evidences of indebtedness of the Authority or the City issued or incurred for such purpose (the “Refunded Obligations”); and

**WHEREAS**, the Authority previously determined to assist the City in the financing and refinancing of the acquisition, construction and installation of the Projects by entering into a Credit Agreement, dated as of October 1, 2017, as amended by a First Amendment to Credit Agreement, dated as of June 27, 2018, and by a Second Amendment to Credit Agreement, dated as of October 15, 2020 (collectively, the “Credit Agreement”), each with the City and Wells Fargo Bank, National Association (the “Bank”) under which the Authority issues its Subordinate Wastewater Revenue Notes (the “Notes”) from time to time in one or more series in an aggregate principal amount not to exceed \$300,000,000 outstanding at any one time and may request advances under the Notes for the purpose of financing the acquisition, construction and installation of the Projects and/or the refunding of any Refunded Obligations; and

**WHEREAS**, in connection with the Credit Agreement, the Authority entered into a Second Amended and Restated Fee Letter Agreement dated October 15, 2020 (the “Fee Letter Agreement”) with the Bank; and

**WHEREAS**, the Authority and the City previously entered into a Subordinate Installment Purchase Contract dated as of October 1, 2017 (the “Installment Purchase Contract”) under which the Authority agreed to sell the Projects to the City and also agreed to refinance the purchase price of Projects previously financed and/or refinanced with any Refunded Obligations and the City agreed to purchase the Projects and pay the refinanced purchase price of Projects previously financed and/or refinanced with any Refunded Obligations; and

**WHEREAS**, in order to purchase the Projects and pay the refinanced purchase price of Projects previously financed and/or refinanced with any Refunded Obligations, the City agreed in the Installment Purchase Contract to make installment payments (the “Installment Payments”) to the Authority in an amount sufficient to pay the purchase price or refinanced purchase price of the Projects, together with interest thereon, and all other amounts payable by the Authority under the Credit Agreement and the Fee Letter Agreement, as amended from time to time; and

**WHEREAS**, the City Council on October 3, 2017 duly adopted Resolution No. 78382 titled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE PROVIDING FOR THE ALLOCATION OF WASTEWATER SYSTEM REVENUES, THE PLEDGE OF WASTEWATER NET SYSTEM REVENUES AND ESTABLISHING COVENANTS TO SECURE THE PAYMENT OF OBLIGATIONS PAYABLE FROM WASTEWATER NET SYSTEM REVENUES" (the "Master Resolution"); and

**WHEREAS**, in the Installment Purchase Contract the City designated the Installment Payments as Subordinate Obligations under the Master Resolution; and

**WHEREAS**, as Subordinate Obligations under the Master Resolution, the Installment Payments are payable solely from, and secured by a pledge of and lien on, the Net System Revenues (as defined in the Master Resolution) subject to the terms of, and as provided in, the Master Resolution; and

**WHEREAS**, the Authority, the City and the Bank wish to enter into the Third Amendment to Credit Agreement (the "Third Amendment"), to revise the calculation of interest and fees on the Notes and to make other related changes; and

**WHEREAS**, the Authority and the Bank also wish to amend and restate the Fee Letter Agreement by entering into a Third Amended and Restated Fee Letter Agreement (the "Amended Fee Letter Agreement") to revise the calculation of interest on the Notes and the fees payable to the Bank in connection with the Notes; and

**WHEREAS**, the Notes and the other payment obligations of the Authority under the Credit Agreement as amended by the Third Amendment and the Amended Fee Letter Agreement are payable solely from, and secured by a pledge and lien on, the Installment Payments made by the City under the Installment Purchase Contract;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**Section 1.** The proposed form of Third Amendment, as posted to the agenda webpage for this joint meeting of the Authority and the City, is hereby approved. Any of the City Manager, the Director of Finance, or their authorized designees (each, an "Authorized Officer"), each acting alone, is hereby authorized and directed, for and on behalf of the City, to execute and deliver the Third Amendment in substantially said form with such additions thereto and changes therein as the Authorized Officer, with the advice of the City Attorney, may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 2.** The proposed form of Amended Fee Letter Agreement, as posted to the agenda webpage for this joint meeting of the Authority and the City, the execution and

delivery of the Amended Fee Letter Agreement by the Authority, and the payment by the Authority of the fees described therein, are hereby approved.

**Section 3.** The City Manager, the Director of Finance, the City Clerk, their authorized designees, and any and all other officers and agents of the City are hereby authorized, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, including execution and delivery of any and all documents, certificates, agreements, notices and reports, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance of the Notes from time to time, the making of advances under the Notes, and the consummation of the transactions as described herein, including without limitation, such documents, certificates, agreements, notices and reports as may be required by the Credit Agreement as amended by the Third Amendment, the Amended Fee Letter Agreement or the Installment Purchase Contract. Further, any Authorized Officer is hereby authorized and directed, for and on behalf of the City, to execute and deliver any tax certificates or tax agreements and any and all other necessary certificates or forms to ensure the tax exempt status of the interest on any Tax Exempt Notes (as defined in the Credit Agreement).

Any authority delegated under this Resolution to a specified official may also be exercised by either the City Manager or by the specified official's authorized designee.

**Section 4.** All actions heretofore taken by the City Manager, the Director of Finance, the City Clerk, their authorized designees, and any and all other officers and agents of the City with respect to the issuance of the Notes and the execution and delivery of the Third Amendment and the Amended Fee Letter Agreement are hereby ratified, confirmed and approved.

**Section 5.** This Resolution shall take effect from and after its adoption.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk