

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENTS TO CERTAIN FINANCING DOCUMENTS, INCLUDING AMENDMENTS TO LETTER OF CREDIT AND REIMBURSEMENT AGREEMENTS, 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 \$125,000,000 AND TO EXTEND THE STATED EXPIRATION DATES AND COMMITMENTS AVAILABLE UNDER SUCH LETTER OF CREDIT AND REIMBURSEMENT AGREEMENTS, AND APPROVING THE ISSUANCE OF COMMERCIAL PAPER NOTES IN AN AMOUNT NOT TO EXCEED \$47,000,000 TO FINANCE THE PURCHASE OF THE SAN JOSE CONVENTION CENTER SOUTH HALL AND DETERMINING THAT THERE WILL BE SIGNIFICANT PUBLIC BENEFITS ACCRUING FROM SUCH FINANCING

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 City and the Authority 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 in accordance with Section 6.02 of the Amended and Restated Trust Agreement and to designate separate series of Commercial Paper Notes; and

WHEREAS, on February 12, 2013, in connection with the Reimbursement Agreements (as defined below) and the Fourth Supplement, the Authority and the City adopted resolutions approving 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, on February 12, 2013, the Authority and the City also adopted resolutions authorizing 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; and

WHEREAS, to secure the payment of principal and interest on the Commercial Paper Notes, State Street Bank and Trust Company and U.S. Bank National Association have issued letters of credit (collectively, the “Letters of Credit”), which Letters of Credit (as previously extended) are stated to expire on November 30, 2018; 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

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 \$85,000,000; and

WHEREAS, the City has requested that the Authority allow the additional use of the Commercial Paper Program 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 “Real Property Acquisition Project”) in an amount not to exceed \$47,000,000, and to increase the maximum principal amount of Commercial Paper Notes that may be outstanding from \$85,000,000 to \$125,000,000; and

WHEREAS, the City Council has held a duly noticed public hearing in accordance with Section 6586.5 of the California Government Code, and has considered whether the financing of the Real Property Acquisition Project by the issuance of Commercial Paper Notes will result in significant public benefits accruing from such financing, consisting of reduced financing costs and whether to approve the increase in the maximum principal amount of Commercial Paper Notes that may be outstanding to \$125,000,000; and

WHEREAS, the Authority now desires to further amend the Amended and Restated Trust Agreement pursuant to a Sixth Supplement to the Amended and Restated Trust Agreement (the "Sixth Supplement"), and, pursuant to Section 7.02 of the Trust Agreement and Section 7.2 of the Sublease, the Authority and the City now desire to execute and deliver a Sixth Amendment to Sublease (the "Sixth Amendment to Sublease"), in order to increase the maximum principal amount of Commercial Paper Notes that may be outstanding \$85,000,000 to \$125,000,000; and

WHEREAS, pursuant to Section 2.10(a) of the Reimbursement Agreements, the City, the Authority, State Street Bank and Trust Company and U.S. Bank National Association, desire to execute amendments to the Reimbursement Agreements (collectively, the "Third Amendments to Reimbursement Agreements" and each, a "Third Amendment to Reimbursement Agreement") 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 Letters of Credit; and

WHEREAS, the City has duly considered such transactions and wishes at this time to approve certain matters relating to said transactions in the public interests of the City;

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

SECTION 1. The City Council has duly noticed and held a public hearing with respect to the approval by the City Council of the financing to be undertaken by the Authority for the City pursuant to the issuance and delivery of Commercial Paper Notes under the Commercial Paper Program to provide funding for the Real Property Acquisition Project, and with respect to the significant public benefit to the City of such financing in accordance with the criteria specified in Section 6586 of the California Government Code. Based on the information provided to the City Council, the City Council approves the financing to be provided by the issuance and delivery of the above-described Commercial Paper Notes, and the City Council further determines that there will be significant public benefits accruing from such financing, consisting of reduced financing costs.

SECTION 2. The City Council hereby approves the issuance of Commercial Paper Notes by the Authority in an amount not to exceed \$47,000,000 for the purpose of funding the Real Property Acquisition Project pursuant to and in accordance with the terms of

governing the Commercial Paper Program set forth in the Trust Agreement, the Reimbursement Agreements, and other related documents.

SECTION 3. The City Council hereby approves the Authority's and the Trustee's execution and delivery of the Sixth Supplement, and the City's execution and delivery of the Sixth Amendment to Sublease and each Third Amendment to Reimbursement Agreements, 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 City Manager or the Director of Finance or their authorized designees (collectively, the "Designated Officers"), each acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney. The Designated Officers, each acting alone, are further authorized to execute and deliver one or more extensions to the Letters of Credit or the commitment available under the Reimbursement Agreements for any 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 Reimbursement Agreements without the approval of this City Council.

SECTION 4. The Designated Officers are each hereby authorized, acting alone, 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, 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, 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 Letters associated with the Reimbursement Agreements. Further, the City Manager, the Director of Finance, the City Clerk, and any other officer of the City designated by the City Manager or the Director of Finance, 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 _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk