

RESOLUTION NO. _____

A TWENTY-FIRST SUPPLEMENTAL RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE SUPPLEMENTAL TRUST AGREEMENTS, ONE OR MORE PRELIMINARY OFFICIAL STATEMENTS, ONE OR MORE FINAL OFFICIAL STATEMENTS, ONE OR MORE BOND PURCHASE AGREEMENTS AND ONE OR MORE CONTINUING DISCLOSURE CERTIFICATES; PROVIDING FOR THE ISSUANCE OF CITY OF SAN JOSE AIRPORT REVENUE REFUNDING BONDS, IN THREE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$521,000,000; PRESCRIBING THE TERMS, CONDITIONS AND FORM OF SAID SERIES OF BONDS; AND AUTHORIZING AND APPROVING OTHER RELATED ACTIONS

WHEREAS, the Council (the “Council”) of the City of San José (the “City”), a municipal corporation and political subdivision duly organized and validly existing under the Constitution of the State of California and the Charter of the City, duly adopted Resolution No. 70532 on June 26, 2001, approving the Master Trust Agreement dated as of July 1, 2001 (the “Master Agreement”) between the City and The Bank of New York Mellon Trust Company, N.A., as successor to BNY Western Trust Company, as trustee (the “Trustee”), providing for the issuance of City of San José Airport Revenue Bonds, and amending and restating Resolution No. 57794 and the supplemental resolutions thereto (collectively, the “Prior Resolution”); and

WHEREAS, the City has previously issued under the Prior Resolution and the Master Agreement its Airport Revenue Bonds, Series of 1992, its Airport Revenue Bonds, Series of 1993, its Airport Revenue Bonds, Series of 1994, its Airport Revenue Refunding Bonds, Series 1998A, its Airport Revenue Bonds, Series 2001A, its Airport Revenue Refunding Bonds, Series 2002A and 2002B, its Airport Revenue Bonds, Series 2004A, 2004B, 2004C and 2004D, its Airport Revenue Bonds, Series 2007A and 2007B, its Airport Revenue Bonds, Series 2011A-1 (the “2011A-1 Bonds”) and 2011A-2 (the “2011A-2 Bonds” and, together with the 2011A-1 Bonds, the “2011A Bonds”), its Airport Revenue Bonds, Series 2011B (the “2011B Bonds”), its Airport Revenue Refunding Bonds, Series 2012A, its Airport Revenue Refunding Bonds, Series 2014A (the “2014A Bonds”), 2014B and 2014C and its Airport Revenue Refunding Bonds, Series 2017A (the “2017A Bonds”) and 2017B (the “2017B Bonds”); and

WHEREAS, capitalized terms not otherwise defined in this Resolution shall have the meanings specified in the Master Agreement; and

WHEREAS, the Master Agreement provides that the City may issue Additional Bonds under the Master Agreement from time to time as the issuance thereof is authorized by the City by a Supplemental Trust Agreement, subject to the conditions and limitations contained in the Law and in Article III of the Master Agreement; and

WHEREAS, the City is not in default under the Master Agreement or any Supplemental Trust Agreement; and

WHEREAS, it is now desirable, necessary and in the best interests of the City to authorize the issuance of three or more series of Additional Bonds in a total aggregate principal amount not to exceed \$521,000,000, to be designated as the "City of San José Airport Revenue Refunding Bonds, Series 2021A (AMT)" (the "2021A Bonds"), "City of San José Airport Revenue Refunding Bonds, Series 2021B (Non-AMT)" (the "2021B Bonds"), "City of San José Airport Revenue Refunding Bonds, Series 2021C (Taxable)" (the "2021C Bonds"), and with such additional or other series designations, including without limitation the addition of a second taxable series of bonds or designation of subseries of the 2021C Bonds, as the Director of Finance, in consultation with the City Attorney and bond counsel, shall determine are necessary or appropriate (collectively, with the 2021A Bonds, the 2021B Bonds and the 2021C Bonds, the "2021 Bonds"), for the purpose of refinancing a portion of the costs of designing and constructing certain improvements to the Norman Y. Mineta San José International Airport, which is owned and operated by the City (the "Airport"), located on Airport Boulevard in the Cities of San José and Santa Clara, California, including refunding all or a portion of the outstanding 2011A-1 Bonds, 2011A-2 Bonds, 2011B Bonds, 2014A Bonds, 2017A Bonds, and 2017B Bonds (collectively, the "Refunded Bonds"), funding any deposits into the Bond Reserve Fund or one or more reserve accounts established under the Master Agreement, and paying costs of issuance of any series of the 2021 Bonds, and this Council has determined that the 2021 Bonds in an aggregate principal amount not to exceed \$521,000,000, which amount shall include up to \$117,000,000 principal amount of 2021A Bonds, up to \$67,000,000 principal amount of 2021B Bonds and up to \$337,000,000 principal amount of 2021C Bonds, should be issued pursuant to the Master Agreement and one or more Supplemental Trust Agreements in the form on file with the City Clerk and made a part hereof (collectively, the "Supplemental Agreement"); and

WHEREAS, there has been prepared a form of Preliminary Official Statement relating to the 2021 Bonds (the "Preliminary Official Statement"), a form of Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"); and

WHEREAS, there has been prepared a form of Bond Purchase Agreement relating to the 2021A Bonds and the 2021B Bonds (the "Tax-Exempt Bond Purchase Agreement"),

and a form of Bond Purchase Agreement relating to the 2021C Bonds (the “Taxable Bond Purchase Agreement” and, together with the Tax-Exempt Bond Purchase Agreement, the “Bond Purchase Agreements”), one or more of which are to be entered into by the City and the purchaser of the 2021 Bonds; and

WHEREAS, it may result in more favorable pricing for the payment of principal of and interest on all or a portion of the 2021 Bonds to be supported by one or more financial guaranty insurance policies (“Bond Insurance”) issued by a provider of such policies (“Bond Insurer”); and

WHEREAS, the conditions and limitations contained in the Law and in Article III of the Master Agreement have been satisfied or will be satisfied at the time of the issuance of the 2021 Bonds; and

WHEREAS, the interest on the 2021A Bonds may qualify for exclusion from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986 (the “Code”) if certain requirements are met by the City, including that the issuance of some or all of the 2021A Bonds to refinance the projects financed by the 2011A Bonds are approved in accordance with Section 147(f) of the Code; and

WHEREAS, this Council is the elected legislative body of the City and is the applicable elected representative required to approve any of the 2021A Bonds for purposes of Section 147(f) of the Code; and

WHEREAS, a notice of public hearing with respect to the 2021A Bonds to be issued by the City was published not less than seven (7) days prior to said public hearing, in a newspaper of general circulation available to the residents of the City; and

WHEREAS, a public hearing was held pursuant to such notice before this Council on March 9, 2021, and an opportunity was provided for interested persons to present arguments for and against the issuance of the 2021A Bonds to refinance the projects described in the notice of public hearing; and

WHEREAS, some or all of the 2021A Bonds to be issued may constitute “private activity bonds” within the meaning of the Code, and in such case, the City intends that such obligations constitute qualified exempt facility bonds within the meaning of Sections 141 and 142 of the Code to refinance airport facilities as described in Section 142(a)(1) of the Code; and

WHEREAS, pursuant to Section 5852.1 of the California Government Code, the City has received certain representations and good faith estimates from PFM Financial Advisors LLC, which good faith estimates are attached hereto as Exhibit A;

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

SECTION 1. Recitals True and Correct. The Council finds and determines that the foregoing recitals are true and correct.

SECTION 2. Approval of Forms of Documents. The proposed Supplemental Agreement, Bond Purchase Agreements and Continuing Disclosure Certificate, in substantially the forms posted to the agenda webpage for this meeting, are hereby approved and adopted.

SECTION 3. Execution and Delivery of Documents. Upon the advice of the City Attorney, the Director of Finance is hereby authorized to execute and deliver one or more Supplemental Agreements, one or more Bond Purchase Agreements and one or more Continuing Disclosure Certificates, all in substantially the forms posted to the agenda webpage for this meeting, with such changes, corrections, revisions or additions thereto as are deemed necessary and desirable to accomplish the purposes hereof.

SECTION 4. Approval of Form of One or More Preliminary Official Statements. The proposed form of the Preliminary Official Statement, substantially in the form posted to the agenda webpage for this meeting, is hereby approved. The Director of Finance and the Director of Aviation are each hereby authorized to deliver one or more Preliminary Official Statements in substantially said form, with such changes, modifications and additions thereto as the Director of Finance and the Director of Aviation may approve upon consultation with the City Attorney, such approval to be evidenced conclusively by the delivery by the Director of Finance and the Director of Aviation of said Preliminary Official Statement as so added to or changed. The Director of Finance and the Director of Aviation are each hereby further authorized to deliver or cause to be delivered one or more final Official Statements, in substantially the form of said Preliminary Official Statement, with such changes and additions thereto as the Director of Finance and the Director of Aviation may approve upon consultation with the City Attorney, such approval to be evidenced conclusively by the delivery by the Director of Finance and the Director of Aviation of said final Official Statement as so added to or changed. The Director of Finance and the Director of Aviation are each hereby authorized to certify that each Preliminary Official Statement is, as of its date, "deemed final" within the meaning of Rule 15c2-12 of the Securities and Exchange Commission.

SECTION 5. Issuance of 2021A Bonds. One or more series of Additional Bonds to be issued under Article III of the Master Agreement and pursuant to one or more Supplemental Agreements is hereby authorized in a total aggregate principal amount not to exceed \$117,000,000, and such Additional Bonds shall be designated as the "City of San José Airport Revenue Refunding Bonds, Series 2021A (AMT)" with such additional or other series designations, as the Director of Finance, in consultation with the City Attorney and bond counsel, shall determine are necessary or appropriate. The

terms and form of the 2021A Bonds shall be as set forth in the appendices to the Supplemental Agreements, and the same are hereby incorporated by reference as if fully set forth herein. As provided in Section 3.03 of the Master Agreement, upon the execution of one or more Supplemental Agreements and the issuance and delivery of the 2021A Bonds, the appendices of each such Supplemental Agreement shall be attached to the Master Agreement and shall thereafter become a part of such document. The 2021A Bonds are hereby designated as Tax-Exempt Bonds and shall mature no later than March 1, 2034. If, on or prior to the execution of one or more Bond Purchase Agreements, the Director of Finance determines, upon consultation with the Financial Advisors and the City Attorney, that it would be advantageous to do so, any portion of the 2021A Bonds authorized to be issued hereby may be issued as bonds the interest on which is federally taxable, with such different or additional series designations and terms as bond counsel shall advise are appropriate or necessary for such bonds to be issued as taxable bonds.

SECTION 6. Issuance of 2021B Bonds. One or more series of Additional Bonds to be issued under Article III of the Master Agreement and pursuant to one or more Supplemental Agreements is hereby authorized in a total aggregate principal amount not to exceed \$67,000,000, and such Additional Bonds shall be designated as the “City of San José Airport Revenue Refunding Bonds, Series 2021B (Non-AMT)” with such additional or other series designations, as the Director of Finance, in consultation with the City Attorney and bond counsel, shall determine are necessary or appropriate. The terms and form of the 2021B Bonds shall be as set forth in the appendices to the Supplemental Agreements, and the same are hereby incorporated by reference as if fully set forth herein. As provided in Section 3.03 of the Master Agreement, upon the execution of one or more Supplemental Agreements and the issuance and delivery of the 2021B Bonds, the appendices of each such Supplemental Agreement shall be attached to the Master Agreement and shall thereafter become a part of such document. The 2021B Bonds are hereby designated as Tax-Exempt Bonds and shall mature no later than March 1, 2034. If, on or prior to the execution of one or more Bond Purchase Agreements, the Director of Finance determines, upon consultation with the Financial Advisors and the City Attorney, that it would be advantageous to do so, any portion of the 2021B Bonds authorized to be issued hereby may be issued as bonds the interest on which is federally taxable, with such different or additional series designations and terms as bond counsel shall advise are appropriate or necessary for such bonds to be issued as taxable bonds.

SECTION 7. Issuance of 2021C Bonds. One or more series of Additional Bonds to be issued under Article III of the Master Agreement and pursuant to one or more Supplemental Agreements is hereby authorized in a total aggregate principal amount not to exceed \$337,000,000, and such Additional Bonds shall be designated as the “City of San José Airport Revenue Refunding Bonds, Series 2021C (Taxable)” with such additional or other series designations, as the Director of Finance, in consultation with the City Attorney and bond counsel, shall determine are necessary or appropriate. The

terms and form of the 2021C Bonds shall be as set forth in the appendices to the Supplemental Agreements, and the same are hereby incorporated by reference as if fully set forth herein. As provided in Section 3.03 of the Master Agreement, upon the execution of one or more Supplemental Agreements and the issuance and delivery of the 2021C Bonds, the appendices of each such Supplemental Agreement shall be attached to the Master Agreement and shall thereafter become a part of such document. The 2021C Bonds are hereby designated as Taxable Bonds and shall mature no later than March 1, 2051.

SECTION 8. Parameters of Issuance for the 2021 Bonds. The 2021 Bonds shall bear interest at fixed interest rates at a true interest cost not to exceed 6.0% per annum. The total compensation to the initial purchasers of the 2021 Bonds shall not exceed 0.5% of the par value of the 2021 Bonds.

SECTION 9. Trustee. The Bank of New York Mellon Trust Company, N.A. is hereby approved as the trustee under each Supplemental Agreement for each series of the 2021 Bonds, effective with the delivery of each such series.

SECTION 10. Bond Insurance. The Council hereby authorizes the Director of Finance to determine which, if any, of the 2021 Bonds shall be supported by Bond Insurance (based on the cost of such Bond Insurance and the interest savings on the 2021 Bonds resulting from such Bond Insurance), purchase any such Bond Insurance from the Bond Insurer, and take all other actions the Director deems necessary to ensure the delivery of such Bond Insurance in connection with the issuance of the 2021 Bonds.

SECTION 11. Ratification and Approval of Actions. The City Manager, the Director of Finance, the Director of Aviation, the City Clerk, the City Attorney, and the designees of any of them, are hereby authorized to execute and deliver any and all certificates, agreements, representations and opinions, as may be acceptable to the City Attorney, including the letter of representations to the bond depository, insurance, reimbursement and financial guaranty agreements with municipal bond insurers, forward purchase agreements, investment agreements, escrow agreements, signature certificates, no-litigation certificates, tax certificates, and other certificates proposed to be delivered in connection with the execution and delivery of each Supplemental Agreement, and the sale of each series of 2021 Bonds, including all certifications required to be provided pursuant to Article III of the Master Agreement, as are deemed to be necessary and desirable to accomplish the transactions contemplated herein.

All action previously taken by the City's officers, employees and agents in furtherance of the transactions contemplated herein, are hereby ratified and approved.

SECTION 12. Approval of 2021A Bonds and Plan of Refunding. It is the purpose and intent of the Council that this Resolution constitutes the approval of (a) the 2021A

Bonds by the appropriate applicable elected representative for purposes of, and in accordance with, Section 147(f) of the Code, and (b) a plan of refunding for the issuance of debt obligations in an amount not expected to exceed \$117,000,000 principal amount of 2021A Bonds issued for the refunding of the outstanding 2011A Bonds, in order to refinance a portion of the costs of designing and constructing certain improvements to the Airport.

SECTION 13. Section Headings and References. The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Twenty-First Supplemental Resolution.

SECTION 14. Repeal of Inconsistent Resolutions. Any resolution of the City, and any part of any resolution, inconsistent with this Resolution, the Master Agreement and each Supplemental Agreement, is hereby repealed to the extent of such inconsistency.

SECTION 15. Effective Date of Twenty-First Supplemental Resolution. This Twenty-First Supplemental Resolution shall take effect from and after its adoption.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

CITY CLERK'S CERTIFICATE

I, TONI TABER, City Clerk of the City of San José, hereby certify as follows:

The attached is a full, true and correct copy of a resolution duly adopted at a regular meeting of the City Council of said City duly and regularly held on March 9, 2021, by teleconference using a Zoom conference call that is open to the public and enables public comment, in accordance with and pursuant to Executive Order N-29-20, signed by the Governor of the State of California on March 17, 2020 and Executive Order N-35-20, signed by the Governor of the State of California on March 21, 2020, and entered in the minutes thereof, of which meeting all of the members of said City Council had due notice and at which a quorum thereof was present; and at said meeting said resolution was adopted by the vote specified on the last page of the resolution.

An agenda of said meeting was posted at least 72 hours before said meeting at 200 East Santa Clara Street, San José, California, a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

I have carefully compared the same with the original minutes of said meeting on file and of record in my office. Said resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

Dated: _____, 2021.

City Clerk of the
City of San José, California

EXHIBIT A

REQUIRED GOOD FAITH ESTIMATES PURSUANT TO GOVERNMENT CODE SECTION 5852.1*

1. **Estimated Principal Amount.** The aggregate principal amount of 2021 Bonds estimated to be sold: \$431,790,000.
2. **True Interest Cost.** As defined in Section 5852.1(a)(1)(A) of the Government Code: 2.935%.
3. **Finance Charge.** As defined in Section 5852.1(a)(1)(B) of the Government Code, the sum of all fees and charges paid to third parties (being costs of issuance of approximately \$1,284,369 plus estimated underwriter's compensation of \$969,429): \$2,253,798.
4. **Amount of Proceeds to be Received.** As described in Section 5852.1(a)(1)(C) of the Government Code, the proceeds to be received by the City for sale of the 2021 Bonds, less the finance charge for the 2021 Bonds described in (3) above and any reserves or capitalized interest paid or funded with proceeds of the 2021 Bonds: \$437,565,619.
5. **Total Payment Amount.** As defined in Section 5852.1(a)(1)(D) of the Government Code, being the sum of (a) all payments the City will make to pay debt service on the 2021 Bonds to final maturity, plus (b) the finance charge described for the 2021 Bonds described in (3) above not paid from proceeds of the 2021 Bonds: \$637,288,184.

** All amounts and percentages are good faith estimates only, based on information available as of the date such estimates have been prepared. Actual results may differ from such good faith estimates based on a variety of reasons, including, without limitation, due to the market conditions prevailing on the actual date of the sale of the 2021 Bonds being different than the market conditions prevailing at the time of preparation of the estimates by PFM Financial Advisors LLC, alterations in the City's financing plan, or a combination of these and other factors.*

COUNCIL OF THE CITY OF SAN JOSE

RESOLUTION NO. _____

A TWENTY-FIRST SUPPLEMENTAL RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE SUPPLEMENTAL TRUST AGREEMENTS, ONE OR MORE PRELIMINARY OFFICIAL STATEMENTS, ONE OR MORE FINAL OFFICIAL STATEMENTS, ONE OR MORE BOND PURCHASE AGREEMENTS AND ONE OR MORE CONTINUING DISCLOSURE CERTIFICATES PROVIDING FOR THE ISSUANCE OF CITY OF SAN JOSE AIRPORT REVENUE REFUNDING BONDS, IN THREE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$521,000,000; PRESCRIBING THE TERMS, CONDITIONS AND FORM OF SAID SERIES OF BONDS; AND AUTHORIZING AND APPROVING OTHER RELATED ACTIONS

Adopted: March 9, 2021
