

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE
AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION
BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO
EXCEED \$225,000,000, AND DIRECTING THE EXECUTION OF
A FISCAL AGENT AGREEMENT AND CERTAIN OTHER
RELATED DOCUMENTS, AND AUTHORIZING ACTIONS
RELATED THERETO**

WHEREAS, an election was duly and regularly held in the City of San José (the “City”) on November 6, 2018, at which there was submitted to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$650,000,000 for the purpose of acquiring land and improvements to land to, among other things, improve emergency and disaster response, repair bridges, repave streets and potholes, prevent flooding and water contamination, including the acquisition of land in the Coyote Valley for these purposes, and repair critical infrastructure (the “2018 Authorization”), which proposition was entitled “San José Disaster Preparedness, Public Safety and Infrastructure Bond Measure”; and

WHEREAS, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds; and

WHEREAS, the City is empowered to issue general obligation bonds which are authorized by at least two-thirds of the qualified electors of the City pursuant to Chapter 14.28 of the San José Municipal Code (the “Act”); and

WHEREAS, pursuant to the 2018 Authorization, the authorization contained in the Act and a Fiscal Agent Agreement dated as of July 1, 2019, between the City and Wilmington Trust, National Association, as fiscal agent, the City has heretofore issued general obligation bonds in the original aggregate principal amount of \$239,900,000, leaving \$410,100,000 of authorized but unissued bonding authority under the 2018 Authorization as of the date hereof; and

WHEREAS, pursuant to the 2018 Authorization and the authorization contained in the Act, the City intends to issue general obligation bonds to be designated as (i) “City of San José General

Obligation Bonds, Series 2021A (Disaster Preparedness, Public Safety, and Infrastructure)” (the “Series 2021A Bonds”), (ii) “City of San José General Obligation Bonds, Series 2021B (Disaster Preparedness, Public Safety, and Infrastructure) (Federally Taxable)” (the “Series 2021B Bonds”), and (iii) “City of San José General Obligation Bonds, Series 2021C (Disaster Preparedness, Public Safety, and Infrastructure) (Federally Taxable)” (the “Series 2021C Bonds” and, together with the Series 2021A Bonds and the Series 2021B Bonds, the “Bonds”), to be issued pursuant to the 2018 Authorization; and

WHEREAS, the Council has duly considered such transaction and desires at this time to approve said transaction and the documents and actions related thereto; and

WHEREAS, the Bonds will be sold by competitive sale pursuant to and in accordance with an Official Notice Inviting Bids (the “Official Notice of Sale”), and will be issued under and pursuant to a fiscal agent agreement (the “Fiscal Agent Agreement”), between the City and Wilmington Trust, National Association, as fiscal agent (the “Fiscal Agent”); and

WHEREAS, prior to the issuance and sale of the Bonds, the City expects to pay and incur certain expenditures in connection with the projects to be financed pursuant to the 2018 Authorization, and the City intends to reimburse itself and to pay third parties for such prior expenditures from the proceeds of the Series 2021A Bonds or such additional series of bonds; and

WHEREAS, Section 1.150-2 of the Treasury Regulations promulgated under the Internal Revenue Code of 1986 (the “Treasury Regulations”) requires the City to declare its reasonable official intent to reimburse prior expenditures with the proceeds of a subsequent borrowing; and

WHEREAS, the Treasury Regulations require that any reimbursement allocation of proceeds of the Series 2021A Bonds be made with respect to expenditures incurred prior to the issuance of the Series 2021A Bonds will occur not later than 18 months after the later of (i) the date on which the expenditure is paid or (ii) the date on which the project is placed in service or abandoned, but in no event later than 3 years after the expenditure is paid; and

WHEREAS, further, as required by California Government Code Section 5852.1 enacted January 1, 2018 by Senate Bill 450, attached hereto as Appendix A is the information relating to the Bonds that has been obtained by the Council and is hereby disclosed and made public;

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

Section 1. Findings and Determinations. The City finds and determines that the maturity dates for the Bonds and the principal amount of the Bonds coming due on each maturity date shall be determined as permitted by the Act.

Section 2. Issuance of Bonds; Approval of Fiscal Agent Agreement. The Bonds are hereby authorized to be issued by the City under and subject to the terms of the Act and the Fiscal Agent Agreement for the purpose of financing the projects approved by voters pursuant to the 2018 Authorization, and paying certain legal, financial and contingent costs in connection therewith. The Bonds shall be issued upon the terms and conditions set forth in the Fiscal Agent Agreement.

The proposed form of Fiscal Agent Agreement in substantially the form posted to the agenda webpage for this meeting is hereby approved, and any of the City Manager, the Director of Finance, the Assistant Director of Finance, or the Deputy Director of Finance responsible for managing the City's debt program (each an "Authorized Officer" and, collectively, the "Authorized Officers") are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Fiscal Agent Agreement in substantially said form, with any additions thereto (including the insertion of the maturity dates, principal amounts and interest rates of the Bonds) and changes therein as any of the Authorized Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney, the execution of which by an Authorized Officer shall be conclusive evidence of the approval of any such additions and changes. The Council hereby authorizes the performance by the City of its obligations under the Fiscal Agent Agreement.

Section 3. Approval of Form of Bonds. The forms of Bonds set forth in the form of Fiscal Agent Agreement are hereby approved, and any of the Authorized Officers are hereby authorized and directed to execute, and the City Clerk is hereby authorized to attest, the Bonds, in the name and on behalf of the City and to cause the delivery thereof as provided for below, to be issued in the number of series, and as federally tax-exempt or taxable, with any additions thereto and changes therein, as any of the Authorized Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney.

Section 4. Sale and Issuance of Bonds. The Council hereby authorizes the sale of the Bonds by a competitive sale pursuant to the Official Notice of Sale. The Council hereby approves, in substantially the form posted to the agenda webpage for this meeting, the Official Notice of Sale. The Authorized Officers are each, acting alone, authorized and directed to distribute the Official Notice of Sale, with such changes, insertions and omissions as may be approved by an Authorized Officer upon consultation with the City Attorney, to potential bidders for the Bonds, and to sell the Bonds by competitive sale in accordance with the terms thereof. The publication of a notice of intention to sell the Bonds as required by Section 53692 of the California Government Code is hereby ratified.

The sale of the Bonds is hereby approved, provided that (a) the true interest cost of the Bonds shall not exceed 6.0% per annum, (b) the principal amount of the Bonds shall not exceed \$225,000,000, and (c) the final maturity date of the Bonds shall not be more than 40 years from the date of issuance.

Any of the Authorized Officers is hereby authorized and directed to evidence the City's acceptance of an offer to purchase the Bonds following competitive biddings pursuant to the Official Notice of Sale.

Section 5. Approval of Official Statement; Continuing Disclosure Certificate. The proposed form of preliminary official statement with respect to the Bonds (the "Preliminary Official Statement") in substantially the form posted to the agenda webpage for this meeting is hereby approved with such additions thereto or changes therein as any of the Authorized Officers, acting alone, shall deem necessary, desirable or appropriate upon consultation with

the City Attorney. The Authorized Officers are hereby authorized and directed, for and on behalf of the City, to execute all certificates necessary to deem final the Preliminary Official Statement as of its date, with the exception of certain final pricing and related information. The Preliminary Official Statement with such changes therein relating to the sale of the Bonds as any of the Authorized Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney shall hereinafter be referred to as the "Official Statement." The Authorized Officers are hereby authorized and directed, each acting alone for and on behalf of the City, to execute and deliver the Official Statement with such additions thereto or changes therein. The use and distribution of said Preliminary Official Statement and use and distribution of the Official Statement in connection with the sale of the Bonds is hereby ratified and approved. In addition, the City Council also approves the form of Continuing Disclosure Certificate attached as an appendix to the Official Statement, and authorizes and directs the Authorized Officers, each acting alone, to execute said Continuing Disclosure Certificate with such additions thereto or changes therein as any of the Authorized Officers, acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney. The execution of the Preliminary Official Statement, the Official Statement and the Continuing Disclosure Certificate by an Authorized Officer shall be conclusive evidence of the approval of any such additions and changes to such document.

Section 6. Bond Insurance. The Authorized Officers, each acting alone, are hereby authorized to take any and all action that he or she deems necessary to qualify the Bonds for municipal bond insurance.

Section 7. Reimbursement. The City hereby declares its official intent to reimburse expenditures of the City relating to the projects to be financed pursuant to the 2018 Authorization that are incurred or paid prior to the issuance and sale of the Series 2021A Bonds or any additional series of bonds issued in the future pursuant to the 2018 Authorization from the proceeds of the Series 2021A Bonds or such additional series of bonds.

Section 8. General Authority. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the transactions

described herein or to otherwise effectuate the purposes of this Resolution, including (i) determining the amount of Bonds to be issued, (ii) executing a custody agreement with the Fiscal Agent relating to the deposit and investment of the good faith deposit prior to the issuance and delivery of the Bonds, and (iii) 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, signature certificates, no-litigation certificates, tax certificates, and other certificates proposed to be delivered in connection with the execution and delivery of the Fiscal Agent Agreement, and the sale of each series of the Bonds. Any such actions previously taken by such officers are hereby ratified and confirmed.

Section 9. Severability. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any remaining provisions hereof.

Section 10. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

APPENDIX A

REQUIRED DISCLOSURES PURSUANT TO GOVERNMENT CODE SECTION 5852.1

1. Estimated True Interest Cost of the Bonds: 2.83%
2. Estimated finance charge of the Bonds, being the sum of all fees and charges paid to third parties, in the amount of approximately \$1,036,390. Such amount consists of costs of issuing the Bonds in the amount of approximately \$629,116 together with estimated underwriter's compensation in the amount of \$407,274.
3. Estimated proceeds of the Bonds expected to be received by the City for deposit to the Project Fund, net of proceeds for Costs of Issuance in (2) above to paid, capitalized interest, transferred premium to redeem the Series 2021C Bonds, and reserves (if any) from the principal amount of the Bonds: \$200,528,000.
4. Estimated Total Payment Amount for the Bonds, being the sum of all debt service to be paid on the Bonds to final maturity: \$302,247,767.

**All amounts and percentages are estimates, and are made in good faith by the City based on information available as of the date of adoption of this Resolution. Estimates include certain assumptions regarding federally taxable interest rates available in the bond market at the time of pricing the Bonds.*