

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE ISSUANCE OF BONDS TO REFUND AND PREPAY CERTAIN PENSION OBLIGATIONS OF THE CITY, APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF A TRUST AGREEMENT AND BOND PURCHASE AGREEMENT, AUTHORIZING JUDICIAL VALIDATION PROCEEDINGS RELATING TO THE ISSUANCE OF SUCH BONDS AND APPROVING ADDITIONAL ACTIONS RELATED THERETO**

**WHEREAS**, the City of San José (the “City”) is a municipal corporation and charter city duly organized and existing under and pursuant to the Constitution and the laws of the State of California and its charter; and

**WHEREAS**, the City has previously established its Police and Fire Department Retirement Plan (the “Police and Fire Plan”) and Federated City Employees’ Retirement System (the “Federated Plan” and, collectively with the Police and Fire Plan, the “Retirement Plans”) which are continued, maintained and administered pursuant to Articles XV and XV-A of the City’s Charter and the City’s Municipal Code, including but not limited to Chapters 3.20 *et seq.* and 3.32 *et seq.* of Title 3 thereof, respectively (collectively, the “Retirement Law”); and

**WHEREAS**, the Police and Fire Plan is administered by the Board of Administration of the Police and Fire Department Retirement Plan and Health Care Trust (the “Police and Fire Plan Board”), and the Federated Plan is administered by the Board of Administration of the Federated City Employee’s Retirement System and Federated City Employees’ Health Care Trust (the “Federated Plan Board” and, together with the Police and Fire Board, the “Retirement Boards”); and

**WHEREAS**, the Retirement Law obligates the City to (i) make contributions to the Retirement Plans to fund pension benefits for certain City employees, (ii) make payments towards the unfunded actuarial liability with respect to such pension benefits under the Retirement Law and the Retirement Plans (the “Unfunded Liability”), and (iii) appropriate funds for the foregoing purposes; and

**WHEREAS**, the City desires to authorize the issuance of its City of San José Taxable Pension Obligation Bonds (the “Bonds”) pursuant to the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code (the “Bond Law”), in a maximum principal amount not to exceed that required to refund the Unfunded Liability, to prepay all or a portion of the City’s annual required retirement contribution including the cost for pension normal rate of contribution, COLA normal service, pension prior service contribution, and COLA prior service that are due and payable within 12 months of the issuance of the Bonds (the “Current Obligation”), and to pay the costs of issuance of

such Bonds, including the underwriter's discount and any original issue discount on such Bonds or the execution and delivery of a placement agent agreement and any placement agent fee in connection with the private placement of the Bonds; and

**WHEREAS**, the City has, since fiscal year 2010-2011, and except for fiscal year 2019-2020, issued tax and revenue anticipation notes and other short-term borrowings to finance the Current Obligation; and

**WHEREAS**, the City's ability to finance the Current Obligation in connection with the issuance of the Bonds would be amortized over the same period in which the Current Obligation is due and payable, and create administrative ease by reducing the necessity for such additional short-term borrowings in the same year; and

**WHEREAS**, the City expects that the need may arise in the future to issue additional refunding bonds (the "Additional Bonds") pursuant to the Bond Law to refinance all or a portion of the then outstanding Unfunded Liability and to fund the Current Obligation; and

**WHEREAS**, the Bonds will be issued under and secured by a Trust Agreement in substantially the form posted to the agenda webpage for this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Trust Agreement" by and between the City and a trustee to be selected by the City (the "Trustee"); and

**WHEREAS**, the City has determined the advisability of filing an action to determine the validity of the Bonds, the Additional Bonds and the Trust Agreement, and the actions proposed to be taken in connection therewith; and

**WHEREAS**, pursuant to Section 5852.1 of the California Government Code, the City has received certain representations and good faith estimates from its Municipal Advisor, which good faith estimates are attached hereto as Exhibit A; and

**WHEREAS**, prior to the issuance of the Bonds or Additional Bonds, the City Council will need to adopt a resolution approving the execution and delivery of a continuing disclosure certificate, a form of a preliminary official statement and the preparation and delivery of an official statement to satisfy the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 or the execution and delivery of a placement agent agreement; and

**WHEREAS**, all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing authorized by this Resolution and the documents referred to herein now exist, have happened and have been performed in regular and due time, form and manner as required by the City Charter and the State of California;

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

**SECTION 1.** The City Council does hereby find and declare that the above recitals are true and correct.

**SECTION 2.** The issuance of the Bonds on the terms and conditions set forth in, and subject to the limitations specified in, the Trust Agreement, is hereby authorized and approved. The Bonds shall be dated, shall bear interest at the rates, shall mature on the dates, shall be issued in the form, and shall have terms as provided in the Trust Agreement, as the same shall be completed in accordance with this Resolution. The title of the Bonds may be changed to reflect the year in which the Bonds are issued, and to reflect the appropriate series designation, as directed by the Director of Finance.

**SECTION 3.** The Trust Agreement, in substantially the form posted to the agenda webpage for this meeting is hereby approved, and either of the City Manager or the Director of Finance (each an “Authorized Officer” and, together, the “Authorized Officers”) are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Trust Agreement in substantially said form, with any additions thereto (including the insertion of the maturity dates, principal amounts, interest rates and series designations of the Bonds) and changes therein as either 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 Trust Agreement. The Authorized Officers are each hereby authorized to select the Trustee for the Bonds.

**SECTION 4.** The City hereby authorizes and approves the issuance of Additional Bonds pursuant to the Bond Law, as authorized by the Trust Agreement, from time to time, to refund all or a portion of the Unfunded Liability and fund the Current Obligation, provided that the City Manager, Director of Finance or their designees, first certifies to the Council in writing that such actions will result in anticipated cost savings to the City. The City authorizes any one of the Authorized Officers to execute and deliver one or more other trust agreements and/or one or more supplemental agreements supplementing or amending the Trust Agreement and providing for the issuance of Additional Bonds (each an “Additional Trust Agreement”); provided, however, that (i) each series of Additional Bonds shall be in a principal amount not to exceed the sum of the Unfunded Liability of the City to the Retirement Plans remaining unpaid on the date of issuance of such Additional Bonds, the Current Obligation, and the costs of issuing the Additional Bonds, (ii) the issuance of each series of Additional Bonds results in savings to the City in accordance with the City’s then current Debt Management Policy and any pension obligation funding policy to be adopted by the City as

determined by an Authorized Officer at the time that each series of Additional Bonds are sold, and (iii) the Additional Bonds issued pursuant to such Additional Trust Agreement shall mature not later than the last date through which the Retirement Boards determined for the amortization of the Unfunded Liability of the City to be refunded by such Additional Bonds in accordance with its current procedures.

Each Unfunded Liability refunded and Current Obligation funded by the Bonds and each series of Additional Bonds pursuant to the Trust Agreement and each Additional Trust Agreement constitutes an obligation imposed by law, pursuant to the Constitution and laws of the State of California and an obligation of the City not limited as to payment from any special source of funds. The Unfunded Liability refunded and Current Obligation funded by the Bonds pursuant to the Trust Agreement and each series of Additional Bonds pursuant to an Additional Trust Agreement shall not, however, constitute an obligation of the City for which the City is obligated or permitted to levy or pledge any form of taxation or for which the City has levied or pledged or will levy or pledge any form of taxation.

**SECTION 5.** The proposed form of the Bond Purchase Agreement (the “Bond Purchase Agreement”) by and among the City and an underwriter or underwriters to be selected by the City (the “Underwriter”) in substantially the form posted to the agenda webpage for this meeting is hereby approved, and the Authorized Officers, acting alone, are each hereby authorized and directed, for and in the name and on behalf of the City, to evidence the City’s acceptance of the offers made by the Bond Purchase Agreement by executing and delivering the Bond Purchase Agreement in substantially said form, with any additions thereto (including the insertion of the maturity dates, principal amounts, interest rates and redemption provisions 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 City Manager and the Director of the Finance are each hereby authorized to select the Underwriter or Underwriters for the Bonds through a competitive process.

**SECTION 6.** The Authorized Officers, are each authorized, on behalf of the City, to establish and determine (i) the final principal amount of the Bonds, provided the aggregate initial principal amount of the Bonds shall not be greater than the lesser of (a) \$3.5 billion or (b) the sum of the City’s Unfunded Liability and Current Obligation as calculated by the actuary for the Retirement Plans or such other actuary selected by the Authorized Officer, together with the costs of issuing the Bonds as approved by such Authorized Officer, (ii) the final interest rates on various maturities of the Bonds, provided that the issuance of the Bonds results in savings to the City in accordance with the City’s then current Debt Management Policy and any pension obligation funding policy to be adopted by the City as determined by an Authorized Officer at the time that the Bonds are sold and that the maturity date of the Bonds shall not be later than the

last date through which the Retirement Boards determined for the amortization of the Unfunded Liability of the City in accordance with its current procedures, and (iii) the Underwriter's discount for the purchase of the Bonds or placement agent fee in connection with the private placement of the Bonds.

**SECTION 7.** The Authorized Officers are hereby authorized to negotiate and execute an insurance policy and debt service reserve fund insurance policy for the Bonds (and such other agreements that may be required by the insurer in connection therewith) if it is determined that the policies will result in interest rate savings for the City, and to pay the insurance premium of such policies from the proceeds of the issuance and sale of the Bonds.

**SECTION 8.** In order to determine the validity of the Bonds, the Additional Bonds, the Trust Agreement and the Additional Trust Agreements, and the actions authorized hereby to be taken in connection therewith, the City Council hereby authorizes the City Attorney to prepare and cause to be filed and prosecuted to completion all proceedings required for the judicial validation of the Bonds, the Additional Bonds, the Trust Agreement and the Additional Trust Agreements in the Superior Court of Santa Clara County, under and pursuant to the provisions of Sections 860 *et seq.* of the California Code of Civil Procedure. The City Council further authorizes the Authorized Officers to take all actions, including the execution and delivery of appropriate documentation, as may be required to conclude such judicial validation proceedings.

**SECTION 9.** The Authorized Officers are, and each of them hereby is, authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereby, including, but not limited to, the preparation of an Official Statement (and a Preliminary Official Statement) for use in connection with the offering and sale of the Bonds or Additional Bonds, the execution and delivery of a continuing disclosure undertaking, the execution and delivery of a placement agent agreement if it is determined that it is in the best interest of the City to sell the Bonds or Additional Bonds in a private sale as opposed to a public offering, and the execution and delivery of any documents required in order to complete the issuance of the Bonds or Additional Bonds, the refunding of the Unfunded Liability and the funding of the Current Obligation.

**SECTION 10.** All actions heretofore taken by the Authorized Officers with respect to the issuance of the Bonds, or in connection with or related to any of the agreements or documents referenced herein, are hereby approved, confirmed, and ratified.

**SECTION 11.** This Resolution shall take effect immediately upon its adoption.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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

## EXHIBIT A

### REQUIRED DISCLOSURES PURSUANT TO GOVERNMENT CODE SECTION 5852.1

1. Estimated true interest cost of the Bonds: 3.19%.
2. Estimated finance charge of the Bonds, being the sum of all fees and charges paid to third parties, in the amount of approximately \$14,783,440. Such amount consists of costs of issuing the Bonds in the amount of approximately \$1,500,000 together with estimated underwriter's compensation in the amount of \$13,283,440.
3. Estimated proceeds of the Bonds expected to be received by the City for the purpose of refunding all or a portion of the City's Unfunded Liability and funding the City's Current Obligation with respect to pension benefits under the Retirement Law and the Retirement Plans, net of proceeds for costs of issuance described in (2) above and net of capitalized interest (if any) and reserves (if any) paid or funded with the proceeds of the Bonds: \$3,306,076,560.
4. Estimated total payment amount for the Bonds, being the sum of all debt service to be paid on the Bonds to final maturity: \$4,405,647,348.

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*\*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.*