

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AND AUTHORIZING THE ISSUANCE OF CITY OF SAN JOSE FINANCING AUTHORITY LEASE REVENUE COMMERCIAL PAPER NOTES IN THE AMOUNT NOT TO EXCEED \$40,000,000 TO FINANCE, ON AN INTERIM BASIS, THE CONSTRUCTION OF THE ADMINISTRATION AND OPERATIONS BUILDING, AND THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF RELATED CAPITAL IMPROVEMENTS, FOR THE WATER RESOURCES DIVISION, REDUCING THE AMOUNT OF CITY OF SAN JOSE FINANCING AUTHORITY LEASE REVENUE COMMERCIAL PAPER NOTES AUTHORIZED TO BE ISSUED AND OUTSTANDING FROM TIME TO TIME TO FINANCE THE PURCHASE OF POWER AND OTHER OPERATING COSTS OF SAN JOSE CLEAN ENERGY TO AN AMOUNT NOT TO EXCEED \$75,000,000 OUTSTANDING AT ANY TIME AND FURTHER AMENDING CITY COUNCIL RESOLUTION NO. 80125 IN CONNECTION THEREWITH, AND AUTHORIZING OTHER RELATED ACTIONS**

**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 pursuant to 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 (the “Commercial Paper Program”) under which the Authority provides financing for certain public capital improvements for the City; and

**WHEREAS**, under the Commercial Paper Program and pursuant to the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code and an Amended and Restated Trust Agreement dated as of June 1, 2005, between the Authority and Wells Fargo Bank, National Association, as trustee, as amended and supplemented from time to time (as so amended and supplemented, the "Trust Agreement"), the Authority is authorized to issue, from time to time, its Tax-Exempt Lease Revenue Commercial Paper Notes, Series 2 and its Taxable Lease Revenue Commercial Paper Notes, Series 2-T (collectively, the "Series 2 Notes"), in the aggregate principal amount not to exceed \$175,000,000 outstanding at any one time; and

**WHEREAS**, under the Commercial Paper Program, the Authority was previously authorized to issue its Tax-Exempt Lease Revenue Commercial Paper Notes, Series 1 and Taxable Lease Revenue Commercial Paper Notes, Series 1-T (collectively, the "Series 1 Notes" and together with the Series 2 Notes, the "Commercial Paper Notes"); and

**WHEREAS**, as of the date hereof, the Series 1 Notes are not supported by a letter of credit and, therefore, the Authority is not permitted to issue any Series 1 Notes pursuant to the terms of the Trust Agreement; and

**WHEREAS**, pursuant to a Site Lease, dated as of January 1, 2004, between the City and the Authority, as amended from time to time, the City leases certain real property owned by the City, including the buildings and improvements thereon (such property as more particularly described in such Site Lease, the "Property"), to the Authority; and

**WHEREAS**, pursuant to a Sublease dated as of January 1, 2004, between the Authority and the City, as amended from time to time, the Authority subleases the Property to the City in exchange for base rental lease payments that are used to (i) reimburse the letter of credit providers for payments made by the credit or liquidity providers with respect to the Commercial Paper Notes and pay all other amounts due and owing to letter of credit providers and (ii) if necessary, make payments on the Commercial Paper Notes; and

**WHEREAS**, the payment of principal and interest on the Series 2 Notes is supported by a letter of credit issued by U.S. Bank National Association pursuant to a Letter of Credit and Reimbursement Agreement, dated as of February 1, 2013, among the Authority, the City and U.S. Bank National Association, as amended from time to time, which letter of credit is scheduled to expire on March 24, 2025; and

**WHEREAS**, the Authority and the City 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 City has now requested that the Authority issue Commercial Paper Notes in an amount not to exceed \$40,000,000 to finance, on an interim basis, the construction of a new Administration and Operations Building, and the acquisition, construction and installation of related capital improvements, for the Water Resources Division, to be located at 3025 Tuers Road in the City of San José (collectively, the “Muni Water Project”); 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 Muni Water Project by the issuance of Commercial Paper Notes will result in significant public benefits accruing from such financing; and

**WHEREAS**, the City expects to expend moneys, other than moneys derived from the issuance of obligations (“Obligations”), on expenditures relating to the costs of the Muni Water Project prior to the issuance of the Obligations, which expenditures would be properly chargeable to a capital account under general federal income tax principles; and

**WHEREAS**, the City reasonably expects to reimburse certain of such capital expenditures with the proceeds of the Obligations; and

**WHEREAS**, the City expects that the maximum principal amount of the Obligations to be issued to finance the Muni Water Projects will not exceed \$40,000,000; and

**WHEREAS**, the City expects to make the reimbursement allocation no later than eighteen (18) months after the later of (i) the date on which the original expenditure is paid or (ii) the date on which the Muni Water Project is placed in service (or abandoned), but in no event later than three (3) years after the date on which the original expenditure for the Muni Water Project is paid; and

**WHEREAS**, the City will not, within one (1) year of the reimbursement allocation, use the proceeds of the Obligations received in the reimbursement allocation in a manner that will result in the creation of replacement proceeds (as defined in Section 1.148-1 of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended (the “Treasury Regulations”)) of the Obligations or another issue; and

**WHEREAS**, this Resolution is intended to be a “declaration of official intent” in accordance with Section 1.150-2 of the Treasury Regulations; and

**WHEREAS**, on June 22, 2021, the Governing Board of the Authority (the “Authority Board”) adopted Resolution No. SJFA 152 and the City Council adopted Resolution No. 80125 to, among other items, approve the issuance of Commercial Paper Notes by the Authority to finance the costs of purchasing power and other operating costs of San

José Clean Energy, a community choice aggregation program for the provision of electrical power within the City's boundaries (the "Clean Energy Program"), in an amount not to exceed \$95,000,000 effective at such times, and upon the occurrence of certain events, described therein, and all of which have passed and occurred as of the date hereof; and

**WHEREAS**, on October 5, 2021, the Authority Board adopted Resolution No. SJFA 154 and the City Council adopted Resolution No. 80254 to, among other items, further amend Resolution No. SJFA 152 and Resolution No. 80125, respectively, to amend the times and events relating to the effectiveness of the authorization for the issuance of Commercial Paper Notes by the Authority to finance the costs of purchasing power and other operating costs of the Clean Energy Program; and

**WHEREAS**, the City Council desires to reduce the amount of Commercial Paper Notes authorized by the City Council to be issued and outstanding from time to time to finance the costs of purchasing power and other operating costs of the Clean Energy Program from \$95,000,000 to \$75,000,000 outstanding at any time; and

**WHEREAS**, the City Council has duly considered the foregoing matters and wishes at this time to approve said matters relating thereto 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 Muni Water 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 within the meaning of said Section 6586, consisting of, among other things, reduced financing costs.

**SECTION 2.** The City Council hereby authorizes the issuance of Commercial Paper Notes by the Authority in an amount not to exceed \$40,000,000 for the purpose of funding the Muni Water Project pursuant to and in accordance with the terms governing the Commercial Paper Program set forth in the Trust Agreement and the other related documents. Such Commercial Paper Notes shall consist solely of Series 2 Notes so long as the Series 1 Notes are not permitted to be issued by the Authority under the Trust Agreement. For the avoidance of doubt, Series 1 Notes may also be issued for the

purpose of funding the Muni Water Project subject to the conditions set forth in this Section 2 if, and when, such notes are permitted to be issued under the terms of the Trust Agreement.

**SECTION 3.** In accordance with Section 1.150-2 of the Treasury Regulations, the City declares its intention to issue the Obligations in an aggregate principal amount not to exceed \$40,000,000. The expenditures to be reimbursed pursuant to this Resolution have been incurred within 60 days prior to the date of adoption of this Resolution or will be incurred after the date of adoption of this Resolution. This declaration of intent does not bind the City to make any expenditure, incur any indebtedness, or proceed with the Muni Water Project.

**SECTION 4.** The City Council hereby reduces the total amount of Commercial Paper Notes authorized to be issued and outstanding from time to time to finance the costs of purchasing power and other operating costs of the Clean Energy Program from \$95,000,000 to \$75,000,000 outstanding at any time. The Commercial Paper Notes issued to finance the costs of purchasing power and other operating costs of the Clean Energy Program may be issued, repaid, and issued again from time to time in accordance with the terms of the Trust Agreement so long as the outstanding amount of such Commercial Paper Notes does not exceed \$75,000,000 at any time. Resolution No. 80125 is hereby deemed to be further amended to give effect to the foregoing. Except as so amended, Resolution Nos. 80125 and 80254 each remain in full force and effect and are in all respects ratified and confirmed.

**SECTION 5.** 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, 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. 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 Commercial Paper Notes, as applicable.

Any authority delegated under this Resolution to a specified official may also be exercised by the specified official's authorized designee and persons acting in such positions on an interim basis.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

MATT MAHAN  
Mayor

ATTEST:

---

TONI J. TABER, CMC  
City Clerk