

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE GOVERNING BOARD OF THE SAN JOSE-SANTA CLARA CLEAN WATER FINANCING AUTHORITY TO ISSUE SEWER REVENUE REFUNDING BONDS, SERIES 2009A, IN THE NOT TO EXCEED PRINCIPAL AMOUNT OF \$35,000,000 AND AUTHORIZING THE EXECUTION AND DELIVERY OF A THIRD AMENDMENT TO IMPROVEMENT AGREEMENT PROVIDING FOR THE REPAYMENT THEREOF AND APPROVING A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE CERTIFICATE AND OTHER DOCUMENTS AND ACTIONS RELATING THERETO

WHEREAS, the City of San José ("San José") and the City of Santa Clara ("Santa Clara" and, together with San José, collectively, the "Cities") have entered into a Joint Exercise of Powers Agreement, dated as of March 1, 1981, as amended and restated by a Second Amended and Restated Joint Exercise of Powers Agreement, dated as of October 17, 1995 (the "CWFA Agreement"), creating the San José-Santa Clara Clean Water Financing Authority (the "Authority") with powers to acquire, construct, maintain and operate systems or plants for the collection, treatment or disposal of sewage, waste or storm water, including without limitation the construction of additions, improvements and betterments to the San José-Santa Clara Water Pollution Control Plant (the "Treatment Plant"); and

WHEREAS, Section 5 of the CWFA Agreement empowers the Authority to incur debts, liabilities or obligations which do not constitute debts, liabilities or obligations of San José or Santa Clara, subject only to such restrictions upon the manner of exercising such power as are imposed upon San José in the exercise of similar powers; and

WHEREAS, the CWFA Agreement allows the Cities to authorize by resolution any exercise of power by the Authority to issue such indebtedness; and

WHEREAS, the Council of the City of San José (the "Council") hereby determines that it is in the public interest and the best interests of San José to authorize the issuance of the Authority's Sewer Revenue Refunding Bonds, Series 2009A (the "Series 2009A Bonds"), to refinance the Authority's Variable Rate Sewer Revenue Refunding Bonds, Series 2005B, currently outstanding in the aggregate principal amount of \$27,130,000 (the "Series 2005B Bonds" or the "Refunded Bonds"), which

were issued, along with the Authority's Sewer Revenue Refunding Bonds, Series 2005A, in the aggregate principal amount of \$54,020,000 (the "Series 2005A Bonds") to refinance the Authority's Sewer Revenue Bonds, Series 1995A and the Authority's Sewer Revenue Bonds, Adjustable Rate Series 1995B, which financed a portion of the costs of the construction of certain additions, improvements and betterments to the Treatment Plant (the "Project"); and

WHEREAS, the Series 2009A Bonds shall be sold pursuant to a negotiated bond purchase agreement (the "Bond Purchase Agreement") to be entered into by the Authority and Citigroup Global Markets Inc., as underwriter for the Series 2009A Bonds (the "Underwriter"); and

WHEREAS, in order for the Authority to issue the Series 2009A Bonds, it is necessary for San José, Santa Clara and the Authority to execute a Third Amendment to Improvement Agreement (the "Third Amendment to Improvement Agreement"), supplementing and amending that certain Improvement Agreement, dated as of November 1, 1995, as previously amended by a First Amendment to Improvement Agreement, dated as of July 1, 1997, and a Second Amendment to Improvement Agreement, dated as of October 1, 2005, each by and among San José, Santa Clara and the Authority, providing for the repayment of the Series 2009A Bonds; and

WHEREAS, there have been presented to this meeting the following:

- (i) A form of Third Amendment to Improvement Agreement, by and among San José, Santa Clara and the Authority;
- (ii) The form of Preliminary Official Statement relating to the Series 2009A Bonds (the "Preliminary Official Statement"); and
- (iii) A form of Continuing Disclosure Certificate (the "Continuing Disclosure Certificate") by San José with respect to the Series 2009A Bonds.

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

SECTION 1. Pursuant to the CWFA Agreement and the laws of the State of California, the Authority is empowered to issue the Series 2009A Bonds for the purposes of refunding the Series 2005B Bonds, making certain deposits to the Series 2009A Debt Service Reserve Account in the Debt Service Reserve Fund and paying any or all expenses incidental thereto or connected therewith. The sale of the Series 2009A Bonds pursuant to the Bond Purchase Agreement and the issuance of the Series 2009A Bonds in the not to exceed principal amount of Thirty-Five Million Dollars (\$35,000,000) are hereby approved.

SECTION 2. The form of Third Amendment to Improvement Agreement presented to and considered at this meeting is hereby approved. The City Manager, Director of Finance, Deputy Director of Finance, and Debt Administrator of San José (each an "Authorized Officer and collectively, the "Authorized Officers") are each hereby authorized, empowered and directed, acting alone, to execute and deliver the Third Amendment to Improvement Agreement in substantially the same form presented to and considered at this meeting, and upon consultation with the City Attorney, with such changes therein as such officer executing the same shall deem appropriate and in the best interests of San José, as conclusively evidenced by such officer's execution thereof.

SECTION 3. The form of the Preliminary Official Statement relating to the Series 2009A Bonds presented to and considered at this meeting is hereby approved. The distribution of the Preliminary Official Statement is hereby approved, such Preliminary Official Statement to be in substantially the same respective form presented to and considered at this meeting, and upon consultation with the City Attorney, with such changes therein as the Authorized Officers shall deem appropriate and in the best interests of San José, as conclusively evidenced by the distribution thereof.

SECTION 4. The distribution of the official statement relating to the Series 2009A Bonds (the "Series 2009A Official Statement") is hereby approved, such Series 2009A Official Statement to be in substantially the form of the Preliminary Official Statement presented to and distributed to each Councilmember in advance of this meeting and considered at this meeting, and upon consultation with the City Attorney with such changes therein as the Authorized Officers shall deem appropriate and in the best interests of San José, as conclusively evidenced by the distribution thereof.

SECTION 5. The form of Continuing Disclosure Certificate presented to and considered at this meeting is hereby approved. The Authorized Officers of San José are each hereby authorized, empowered and directed, acting alone, to execute and deliver the Continuing Disclosure Agreement in substantially the same form presented to and considered at this meeting, and upon consultation with the City Attorney, with such changes therein as such officer executing the same shall deem appropriate and in the best interests of San José as conclusively evidenced by such officer's execution thereof.

SECTION 6. The officers of San José and their authorized representatives are, and each of them acting alone is, hereby authorized to execute any and all documents and do and perform any and all acts and things, from time to time consistent with this Resolution and necessary or appropriate to carry the same into effect and to carry out its purposes.

SECTION 7. 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.

ADOPTED this 13th day of January, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk