

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING THE ISSUANCE OF REVENUE BONDS BY THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY FOR THE PURPOSE OF FINANCING AND REFINANCING THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF CERTAIN RENEWABLE ENERGY FACILITIES

WHEREAS, UTS SJ-1, LLC, a Delaware limited liability company, or an affiliate thereof and RP-1, LLC, a Delaware limited liability company, or an affiliate thereof (each a "Borrower" and collectively the "Borrowers") have requested that the California Municipal Finance Authority (the "Authority") issue and sell revenue bonds in the maximum principal amount of \$24,000,000 (the "Bonds") for the purpose of making loans to the Borrowers to (1) finance and refinance the acquisition, construction, improvement and equipping of a facility for the treatment of anaerobic digester gas, one or more fuel cell power plants and related facilities (collectively, the "IEUA Project") to be located at the Inland Empire Utility Agency Regional Water Recycling Plant #1, 2662 East Walnut Street, Ontario, CA 91761; (2) finance and refinance the acquisition, construction, improvement and equipping of a facility for the treatment of anaerobic digester gas, one or more fuel cell power plants and related facilities (collectively, the "San José Project" and together with the "IEUA Project," the "Project") to be located at the San José/Santa Clara Water Pollution Control Plant, 700 Los Esteros Road, San José, CA 95134; (3) fund a debt service reserve fund for the Bonds; and (4) pay certain expenses incurred in connection with the issuance of the Bonds; and

WHEREAS, the IEUA Project will be owned and/or operated by RP1 Fuel Cell, LLC, a Delaware limited liability company, or an affiliate thereof, and the San José Project will be owned and/or operated by UTS SJ-1, LLC, a Delaware limited liability company, or an affiliate thereof; and

WHEREAS, pursuant to Section 147(f) of the Internal Revenue Code of 1986 (the "Code"), the issuance of the Bonds by the Authority must be approved by the City because a portion of the Project to be financed and refinanced with the proceeds of the Bonds is located within the territorial limits of the City of San José (the "City"); and

WHEREAS, the City Council of the City (the "City Council") is the elected legislative body of the City and is one of the "applicable elected representatives" required to approve the issuance of the Bonds under Section 147(f) of the Code; and

WHEREAS, the Authority has requested that the City Council approve the issuance of the Bonds by the Authority in order to satisfy the public approval requirement of (1) Section 147(f) of the Code, and (2) the requirements of Section 4 of the Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004 (the "Agreement"), among certain local agencies, including the City, pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code (commencing with Section 6500 et seq.) of the State of California (the "Act"); and

WHEREAS, pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the issuance of the Bonds, and now desires to approve the issuance of the Bonds by the Authority; and

WHEREAS, the Borrowers have requested the issuance of the Bonds in order to effect savings in interest rate and/or issuance costs to effect significant public benefits pursuant to the Act; and

WHEREAS, it is in the public interest and for the public benefit that the City Council approve the issuance of the Bonds by the Authority for the aforesaid purposes;

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

Section 1. The foregoing resolutions are true and correct.

Section 2. The City Council hereby approves the issuance of the Bonds by the Authority. It is the purpose and intent of the City Council that this resolution constitute approval of the issuance of the Bonds (a) by the "applicable elected representative" of the governmental unit having jurisdiction over the area in which a portion of the Project to be financed with the proceeds of the Bonds is to be located, in accordance with Section 147(f) of the Code; and (b) by the City Council in accordance with Section 4 of the Agreement.

Section 3. The issuance of the Bonds shall be subject to the approval of the Authority of all financing documents relating thereto to which the Authority is a party. The City shall have no responsibility or liability whatsoever with respect to the Bonds.

Section 4. The adoption of this Resolution shall not obligate the City or any department thereof to (i) provide any financing to acquire or construct the Project or any refinancing of the Project; (ii) approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the acquisition, rehabilitation or operation of the Project; (iii) make any contribution or advance any funds whatsoever to the Authority; or (iv) take any further action with respect to the Authority or its membership therein.

Section 5. This resolution shall take effect immediately upon its passage.

ADOPTED this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk