

RESOLUTION NO. 75606

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE APPROVING THE ISSUANCE BY THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY OF NOT TO EXCEED \$30,000,000 AGGREGATE PRINCIPAL AMOUNT OF THE AUTHORITY'S REVENUE BONDS FOR THE PURPOSE OF FINANCING THE COST OF CONSTRUCTION, INSTALLATION AND EQUIPPING OF FACILITIES FOR THE BENEFIT OF SUNPOWER CORPORATION AND/OR A RELATED ENTITY, AND PROVIDING FOR OTHER MATTERS RELATING THERETO HEREIN SPECIFIED

WHEREAS, SunPower Corporation, a Delaware corporation (the "Corporation"), has submitted and the California Enterprise Development Authority (the "Authority") has accepted, an application requesting the Authority to issue, from time to time, pursuant to a plan of finance, its tax-exempt and/or taxable revenue bonds in an aggregate principal amount not to exceed \$30,000,000 (the "Bonds") for the benefit of the Corporation and/or a related entity pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State, (commencing with Section 6500) (the "Act") the proceeds of which will be used in part to (finance the cost of improving, rehabilitating, and equipping three buildings containing an aggregate of 185,704 square feet located at 51, 77 and 145 Rio Robles Drive, San José, California 95134 (the "Facilities"); and (b) pay capitalized interest, credit enhancement costs and certain costs of issuance in connection with the Bonds; and

WHEREAS, the issuance of the Bonds must be approved by the governmental unit on behalf of which the Bonds are issued and a governmental unit having jurisdiction over the territorial limits in which the Facilities are located pursuant to the public approval requirement of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Facilities are located within the territorial limits of City of San José (the "City") and the City Council of the City (the "City Council") is the elected legislative body of the City; and

WHEREAS, the City is an Associate Member of the Authority and is authorized to participate in the Authority's conduit financing programs; and

WHEREAS, pursuant to a resolution adopted on December 8, 2009, the City Council designated the entire geographic area of the City as a recovery zone (the "Recovery Zone") for purposes of Section 1400U-1 of the Code; and

WHEREAS, the Facilities are located within the Recovery Zone and the Facilities will create employment opportunities for residents of the City; and

WHEREAS, the Facilities are expected to provide significant benefits to the residents of the City through the creation of new employment opportunities for residents of the City; and

WHEREAS, the Authority and the Corporation have requested that the City Council approve the issuance of the Bonds by the Authority and the financing of the Facilities with the proceeds of the Bonds pursuant to Section 147(f) of the Code; and

WHEREAS, the Authority's issuance of the Bonds will result in a more economical and efficient issuance process because of the Authority's expertise in the issuance of conduit revenue bonds; and

WHEREAS, it is intended that this Resolution shall comply with the public approval requirements of Section 147(f) of the Code; provided, however, that this Resolution is neither intended to nor shall it constitute an approval by the City Council of the Facilities for any other purpose; and

WHEREAS, a public hearing was held by the City Manager's authorized designee, for and on behalf of the City Council, at 11:00 a.m. on October 18, 2010 at 200 East Santa Clara Street, Room 1753, San José, California 95113, following duly published notice thereof in a newspaper of general circulation in the City of San José, on October 4, 2010, and all persons desiring to be heard have been heard;

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

- Section 1. The City Council hereby finds and determines that all of the recitals are true and correct.
- Section 2. The Authority is hereby authorized to issue the Bonds in an amount not to exceed \$30,000,000 under Section 1400U-3 of the Code and loan the proceeds thereof to the Corporation and/or a related entity to finance the Facilities.
- Section 3. The City Council hereby approves the issuance of the Bonds by the Authority, which Bonds may be tax-exempt and/or taxable as approved by the Authority in its resolution, in an amount not to exceed \$30,000,000 to finance the cost of the Facilities. This Resolution shall constitute "host" approval of the issuance of the Bonds within the meaning of Section 147(f) of the Code and shall constitute the approval of the issuance of the Bonds within the meaning of the Act; provided, however, that this Resolution shall not constitute an approval by the City Council of the Facilities for any other purpose. The City shall not bear any responsibility for the tax-exempt status of the Bonds, the repayment of the Bonds or any other matter related to the Bonds.

Section 4. All actions heretofore taken by the officers, employees and agents of the City with respect to the approval of the Bonds are hereby approved, confirmed and ratified, and the officers and employees of the City and their authorized deputies and agents are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all certificates and documents which they or bond counsel may deem necessary or advisable in order to consummate the Bonds and otherwise to effectuate the purposes of this Resolution.

Section 5. This Resolution shall take effect from and after its adoption.

ADOPTED this 19th day of October, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, HERRERA, KALRA,
LICCARDO, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CONSTANT, NGUYEN.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk