

DRAFT 6/12/2024 *MCT*

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ORDERING THE SUBMISSION OF A PROPOSITION INCURRING BONDED INDEBTEDNESS TO THE QUALIFIED VOTERS OF THE CITY OF SUNNYVALE AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 5, 2024, FOR THE PURPOSE OF FINANCING THE COST OF THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF CERTAIN MUNICIPAL IMPROVEMENT PROJECTS CONSTITUTING PUBLIC INFRASTRUCTURE OF THE CITY

WHEREAS, the City of Sunnyvale (the “City”) is a municipal corporation and charter city duly organized and existing under the Constitution and laws of the State of California; and

WHEREAS, the City is undertaking certain public infrastructure improvements for the City consisting of the reconstruction and rehabilitation of the Sunnyvale Public Library (the “Improvements”); and

WHEREAS, the City is authorized to call an election for the proposition of incurring a bonded indebtedness and to issue such bonds to finance municipal improvements constituting public infrastructure of the City pursuant to certain provisions of the California Government Code, including Article 1 of Chapter 4 of Division 4 of Title 4 (commencing with Section 43600) and Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 (commencing with Section 53506) (collectively, the “Bond Law”); and

WHEREAS, the City intends to issue its general obligation bonds (the “Bonds”) under and pursuant to the Bond Law to finance the cost of the acquisition, construction and improvement of the Improvements; and

WHEREAS, under existing law, approval of the Bonds requires 2/3 of the voters in the City voting on the proposition to vote in favor; and

WHEREAS, Assembly Constitutional Amendment No. 1 (“ACA1”) has qualified for the November 5, 2024 Statewide ballot and would, among other things, change existing law to authorize a city, county, city and county, or special district to levy an ad valorem tax to service bonded indebtedness incurred to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure if the proposition proposing that tax is approved by 55% of the voters of the city, county, city and county, or special district, as applicable, and the proposition includes specified accountability requirements; and

WHEREAS, the foregoing amendments effectuated by ACA1, if approved at the November 5, 2024 Statewide ballot, would apply to any proposition authorizing general obligation bonds of a city that is submitted at the same election as ACA1; and

WHEREAS, the proposition to approve the Bonds complies with all the provisions of ACA1, including all of its accountability requirements, so that, if ACA1 is approved on November 5, 2024, approval of the Bonds shall require that 55% (not 2/3) of the voters in the City voting on the proposition vote in favor; and

WHEREAS, if the ballot measure authorizing issuance of the Bonds is approved by the requisite number of affirmative votes, the City will be authorized to issue the Bonds.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

1. **Purpose and Intent.** Pursuant to the authority provided by the California Government Code and California Elections Code, the City Council proposes to order the submission of a proposition authorizing the City to issue general obligation bonds (the “Bonds”) to the qualified voters of the City at the general municipal election to be held on November 5, 2024.

2. **Findings.** The City Council hereby makes the following findings with respect to the proposed measure for the Bonds:

- (i) On June 18, 2024, the City Council adopted, by a two-thirds vote of all its members, a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Determining that the Public Interest and Necessity Demand the Acquisition, Construction and Improvement of Municipal Improvement Projects Constituting Public Infrastructure of the City, and Their Financing Through the Issuance of General Obligation Bonds,” pursuant to which the City Council has found and determined that the public interest and necessity demand the issuance of general obligation bonds to finance the Improvements, which are municipal improvement projects constituting public infrastructure of the City.
- (ii) In order to provide for the issuance by the City of general obligation bonds to provide financing for the Improvements, it is necessary for the City Council to adopt an ordinance ordering the submission of the proposition of incurring bonded indebtedness for such purpose to the qualified voters of the City at a municipal election.
- (iii) The City Council desires to submit said ballot measure to the qualified voters of the City at the regular election to be held in the City on November 5, 2024, and to consolidate the bond election with other elections held within the City on that date.

3. **Call for Election.** The City Council hereby orders that there be submitted to the qualified voters of the City a proposition on incurring bonded indebtedness for the purposes set forth in this Ordinance, at the regular election to be held on November 5, 2024.

4. **Ballot Proposition.** The City Council hereby submits to the qualified voters of the City, at the regular election to be held on November 5, 2024, a proposition on issuing the Bonds. The statement of the measure shall be in substantially the form set forth in the resolution of the City placing the measure on the ballot.

5. **Object and Purpose of Bonds.** The object and purpose of the Bonds is to finance some or all of the costs of the Improvements. The authorized Improvements also include all work, facilities and expenditures necessary and incidental to the projects described above. Examples of such work, facilities, and expenditures include, but are not limited to: costs of design, engineering, architect and other professional services, inspections, site preparation, utilities, landscaping, construction management and other planning and permitting, legal, accounting and similar costs; a customary construction contingency; demolition and disposal of existing structures; rental or construction of storage facilities and other space on an interim basis for materials and other equipment and furnishings displaced during construction; addressing unforeseen conditions revealed by construction or renovation, and other necessary improvements required to comply with existing building codes and other applicable law, including the Americans with Disabilities Act; costs of the bond election; bond issuance costs; project administration during the duration of such projects; and financing and interest costs on the Bonds.

The final costs, locations, designs, layouts and other components of the Improvements will be determined as plans are finalized, construction bids are awarded, and projects are completed. Therefore, the City Council cannot guarantee that the Bonds will provide sufficient funds to allow completion of all needed Improvements.

6. **Estimated Cost of Improvements.** The estimated cost of the Improvements is \$290,000,000.00. The estimated cost includes legal or other fees, the costs of printing the Bonds, and other costs and expenses incidental to or connected with the authorization, issuance and sale of the Bonds. To the extent the Improvements financed are revenue-producing public works, the cost of the Improvements may also include bond interest estimated to accrue during the construction period and for a period of not to exceed 12 months after completion of construction.

7. **Principal Amount of Bonds.** The aggregate principal of the Bonds shall not exceed \$290,000,000.00.

8. **Maximum Interest Rate.** The maximum rate of interest to be paid on the Bonds shall be the statutory maximum of 12% per annum. Said interest shall be payable semiannually, except that interest for the first year after the date of the Bonds may be made payable at the end of said year.

9. **Issuance and Sale of Bonds.** The City proposes to issue and sell the Bonds pursuant to Article 1, commencing with Section 43600, of Chapter 4 of Division 4 of Title 4 of the California Government Code, or Article 4.5, commencing with Section 53506, of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, in one or more series, in the maximum amount and for the objects and purposes set forth above if the requisite number of

qualified voters voting on the proposition vote in favor thereof. The Bonds will be general obligations of the City payable from and secured by ad valorem taxes levied and collected in the manner prescribed by the laws of the State of California. The revenue generated from the ad valorem tax levied and collected will be used for the payment of debt service on the Bonds. All of the Bonds shall be equally and ratably secured, without priority, by the taxing power of the City.

10. Manner of Conducting Election. The election on the Bonds held on November 5, 2024 shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted, and returned, returns canvassed, results declared, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the election with which it is consolidated.

11. Procedure for Voting on Proposition. Ballots for the election shall be provided in the form and in the number provided by law. Voters shall be provided an opportunity to vote for or against the proposition on the ballot, in accordance with procedures to be adopted by the authorized officers of the County of Santa Clara (the “County”) charged with conducting the election.

12. Accountability Requirements. In accordance with ACA1 and Sections 53410 and 53411 of the California Government Code, the City Council hereby adopts the following accountability requirements relating to the Bonds:

- (i) The proceeds from the sale of the Bonds shall be used only for the purposes specified in this Ordinance, and not for any other purpose, including City employee salaries and other operating expenses. The administrative cost of the City for the Improvements shall not exceed 5% of the proceeds from the sale of the Bonds.
- (ii) The proceeds from the sale of the Bonds shall only be spent on projects and programs that serve the jurisdiction of the City.
- (iii) This Ordinance shall be the ordinance through which projects will be funded and the City hereby certifies that it has evaluated alternative funding sources.
- (iv) The City shall conduct an annual, independent performance audit to ensure that the Bond funds are expended pursuant to the local program specified in clause (iii).
- (v) The City shall conduct an annual, independent financial audit of the proceeds from the sale of the Bonds until all of those proceeds have been expended for the public infrastructure.
- (vi) The City shall post the audits required by clauses (iv) and (v) in a manner that is easily accessible to the public.

- (vii) The City shall submit the audits required by clauses (iv) and (v) to the California State Auditor for review.
- (viii) The City shall appoint a citizens' oversight committee to ensure that Bond proceeds are expended only for the purposes described in the measure approved by the voters. Members appointed to the oversight committee shall receive educational training about bonds and fiscal oversight.
- (ix) Any entity owned or controlled by a member of the City Council shall be prohibited from bidding on any work funded by the proposition.
- (x) A separate account shall be created and held by the City, into which the proceeds of the Bonds shall be deposited and applied solely for the purpose of financing the Improvements.
- (xi) The City's Director of Finance shall file a report with the City Council at least annually showing the amount of Bond proceeds collected and expended, and the status of the Improvements.

13. **Identification of Tax.** The tax imposed by this measure is an ad valorem tax levied upon taxable real property in the City, and will be used to pay the principal and interest on the Bonds.

14. **Official Actions.** The Mayor, the City Manager, the Director of Finance, the City Clerk, and any of their designees, are hereby authorized to execute any documents and to perform all acts necessary to place the Bond measure on the ballot.

15. **Interpretation.** The provisions of this Ordinance, being necessary for the health, welfare, and safety of the City and its residents, is to be liberally interpreted to carry out its purposes. No error, irregularity or informality, and no neglect or omission of any officer, in any proceeding taken related to the submission of the proposition incurring bonded indebtedness to the qualified voters of the City shall void or invalidate any such proceeding, any Bonds issued by the City or any levy of ad valorem taxes to pay principal of and interest on the Bonds.

16. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications, and to this end the provisions this Ordinance are declared to be severable.

17. **Publication of Ordinance.** This Ordinance shall be published once a day for at least seven days in a newspaper published at least six days a week in the City, or once a week for two weeks in a newspaper published less than six days a week in the City. The first of said publications shall, in either event, be within 15 days after the adoption of this Ordinance. If there are no such newspapers, it shall be posted in three public places in the City for two succeeding weeks. No other notice need be given.

18. **Effective Date.** In accordance with Section 36937(a) of the California Government Code, this Ordinance shall become effective immediately, as an ordinance relating to an election, upon its adoption by two-thirds vote of all the members of this City Council.

19. **CEQA.** Placing the Library GO Bond measure on the ballot is a fiscal and administrative activity that is exempt from California Environmental Quality Act (CEQA) review pursuant to CEQA Guidelines Sections 15378(b)(4) and (b)(5) because it involves fiscal and administrative activities that will not result in direct or indirect changes to the environment. The Civic Center Master Plan Environmental Impact Report (EIR) included analysis of a new or renovated library for Phase 2 of the Master Plan. The Council's preferred design for the Library has some differences from the Phase 2 library project analyzed in the EIR, but those project changes are not expected to cause new or different significant environmental impacts. Therefore, an addendum to the EIR reflecting the design changes may be prepared pursuant to CEQA Guidelines section 15164 if the measure is approved by voters and the design and construction moves forward.

Introduced by the City Council at a regular meeting held on June 18, 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

Passed and adopted by the City Council at a regular meeting held on June 25, 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

DAVID CARNAHAN
City Clerk

LARRY KLEIN
Mayor

Date of Attestation: _____

(SEAL)

APPROVED AS TO FORM:

REBECCA L. MOON
City Attorney