

DRAFT 9/3/2020 *RLM*

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF SUNNYVALE AUTHORIZING THE EXECUTION AND  
DELIVERY OF WIFIA LOAN AGREEMENT AND TERM  
SHEET AND THE ISSUANCE OF WIFIA BOND AND  
APPROVING RELATED DOCUMENTS AND ACTIONS**

WHEREAS, the City is authorized pursuant to the provisions of Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code (the “Bond Law”), enacted pursuant to the charter of the City and an ordinance adopted on the date hereof, entitled “Ordinance of the City of Sunnyvale Enacting the City of Sunnyvale Municipal Utilities Revenue Bond Law, Relating to the Financing of Public Utility Enterprises,” to issue its revenue bonds and other indebtedness for the purposes of financing improvements to a utility enterprise of the City; and

WHEREAS, in order to finance and refinance improvements to City’s water pollution control plant (the “Water Pollution Control Plant”), which is part of the City’s municipal wastewater utility enterprise (the “Wastewater System”), the City has requested that the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Lender”) make a loan to the City (the “WIFIA Loan”) in a principal amount not to exceed \$221,000,000 (excluding interest that is capitalized as described below) pursuant to the application for financial assistance submitted by the City to the WIFIA Lender in October 2019; and

WHEREAS, the proceeds of the WIFIA Loan will be to be used to finance or refinance (through the prepayment of interim financing issued by the City) a portion of the costs of certain improvements to the Water Pollution Control Plant known as the Sunnyvale Cleanwater Program Phase 2, consisting of rehabilitation of the Water Pollution Control Plant’s existing secondary and tertiary treatment facilities, construction of new secondary treatment and solids handling facilities, and reconstruction of support facilities necessary to operate the plant (the “Project”); and

WHEREAS, the WIFIA Loan will be evidenced by a loan agreement entitled “WIFIA Loan Agreement” between the WIFIA Lender and the City, and a wastewater revenue bond issued by the City (the “WIFIA Bond”), the terms of each of which are summarized in a term sheet (the “WIFIA Term Sheet”) between the WIFIA Lender and the City; and

WHEREAS, the payment of debt service on the WIFIA Loan as evidenced by the WIFIA Bond will be secured by a pledge of and lien on the net revenues of the Wastewater System on a parity with the City’s outstanding bonds captioned “\$14,035,000 City of Sunnyvale Wastewater Revenue Refunding Bonds, Series 2017A” and “\$10,585,000 City of Sunnyvale Taxable Wastewater Revenue Refunding Bonds, Series 2017A-T,” and an Installment Sale Agreement entitled “Headworks and Primary Treatment, Phase 1(A), Clean Water State Revolving Fund Project No. C-06-8153-110, Agreement No. D16-01024,” in the original principal amount of

\$127,068,522, dated as of December 9, 2016, between the City and the State of California Water Resources Control Board; and

WHEREAS, the WIFIA Loan as evidenced by the WIFIA Bond will be incurred on a federally taxable basis; and

WHEREAS, in accordance with Government Code Section 5852.1, the City Council has obtained and disclosed the information required thereby, as more fully set forth in the staff report accompanying this Resolution; and

WHEREAS, the City Council wishes at this time to give its approval to the WIFIA Loan as evidenced by the WIFIA Bond and related transactions described herein, and the form of the agreements and documents relating thereto.

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

1. **Findings.** The City Council hereby finds and determines that the foregoing recitals are true and correct. It is the intention of the County that the WIFIA Loan as evidenced by the WIFIA Bond be subject to all applicable federal income taxation pursuant to Section 5900 et seq. of the California Government Code.

2. **Authorization of WIFIA Loan and Issuance of WIFIA Bond.** The City Council hereby authorizes the incurrence of the WIFIA Loan and the issuance of the WIFIA Bond by the City in order to finance or refinance a portion of the costs of the Project under the Bond Law and the WIFIA Loan Agreement, provided that the interest rate with respect to the WIFIA Loan as evidenced by the WIFIA Bond shall not exceed 2.50% and the aggregate principal amount of the WIFIA Loan as evidenced by the WIFIA Bond shall not exceed \$221,000,000; provided, however, that the foregoing maximum aggregate principal amount excludes interest to be capitalized and added to the outstanding principal amount of the WIFIA Loan as evidenced by the WIFIA Bond in a manner consistent with Sections 3 and 8(b) of the WIFIA Loan Agreement. The final aggregate principal amount of the WIFIA Loan as evidenced by the WIFIA Bond shall be determined by an Authorized Officer (as defined below) upon the advice of the Municipal Advisor (as defined below).

3. **Approval of WIFIA Loan Agreement and WIFIA Term Sheet and Issuance of WIFIA Bond.** The City Council hereby approves the WIFIA Loan Agreement and WIFIA Term Sheet in substantially the forms on file with the City Clerk, together with such additions thereto and changes therein as the City Manager or the Director of Finance (each an "Authorized Officer") may deem necessary, desirable or appropriate upon the advice of Special Counsel (as defined below); provided that the execution thereof by an Authorized Officer shall be conclusive evidence of the approval of any such additions and changes. The Authorized Officers are each hereby separately authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the final form of the WIFIA Loan Agreement, WIFIA Term Sheet and WIFIA Bond for and in the name and on behalf of the City. The City Council hereby authorizes the delivery and performance of the WIFIA Loan Agreement and the issuance, delivery and performance of the WIFIA Bond.

4. **Engagement of Professionals.** The engagement of the following professionals in connection with the WIFIA Loan is hereby ratified and confirmed: Jones Hall, A Professional Law Corporation, as special counsel (“Special Counsel”); JP Morgan, as placement agent; and Ross Financial as municipal advisor (the “Municipal Advisor”).

5. **Official Actions.** The Mayor, the City Manager, the Director of Finance, the City Clerk and any and all other officers of the City are hereby authorized and directed, for and in the name 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 certificates, requisitions, agreements, notices, consents and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions as described herein. Any such actions previously taken by any such officers of the City are hereby ratified and approved. Whenever in this resolution any officer of the City is authorized to execute or attest any document or take any action, such execution, attestation or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf if such officer is absent or unavailable.

6. **Effective Date.** This Resolution shall take effect upon its passage and adoption.

Adopted by the City Council at a regular meeting held on \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney