

**RESOLUTION NO. 2018 - 035**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA  
AUTHORIZING THE EXECUTION OF AN INSTALLMENT SALE AGREEMENT,  
TRUST AGREEMENT AND ESCROW AGREEMENT IN CONNECTION WITH  
THE ISSUANCE AND SALE OF CERTIFICATES OF PARTICIPATION FOR THE  
PURPOSE OF REFINANCING THE COSTS OF WATER AND WASTEWATER  
SYSTEM IMPROVEMENT PROJECTS, APPROVING AN OFFICIAL  
STATEMENT AND RELATED MATTERS**

**WHEREAS**, the City of Calistoga (the "City") owns and operates facilities and property for the supply, treatment and distribution of water (the "Water System") and the collection, treatment and disposal of wastewater within the service area of the City (the "Wastewater System") and the City wishes to provide funds for the refinancing of the cost of improvements to the Water System and the Wastewater System (the "Prior Projects"); and

**WHEREAS**, for the Wastewater System the City previously entered into:

(i) an Installment Purchase Agreement, dated as of August 1, 2001 (the "2001 Wastewater Installment Purchase Agreement") with the California Statewide Communities Development Authority (the "Authority"), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$3,500,000 (the "2001 Wastewater Installment Payments") for the purpose of financing certain improvements to the Wastewater System, and in connection therewith the Authority issued its Water and Wastewater Revenue Bonds (Pooled Financing Program), Series 2001B (the "2001 Bonds"), pursuant to an Indenture, dated as of August 1, 2001, between the Authority and Union Bank of California, N.A., as trustee; and,

(ii) an Installment Purchase Agreement, dated as of May 18, 2005 (the "2005 Wastewater Installment Purchase Agreement") with the Calistoga Public Facilities Corporation (the "Corporation"), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$2,028,500 (the "2005 Wastewater Installment Payments") for the purpose of financing certain improvements to the Wastewater System, which 2005 Installment Payments are payable on a parity basis to the 2001 Installment Payments, and in connection therewith the Corporation issued its 2005 Certificates of Participation (the "2005 Certificates"), pursuant to a Trust Agreement, dated May 18, 2005, among the Corporation, the City and the City Treasurer of the City of Calistoga, as trustee, and

(iii) a State Revolving Fund Loan Program Loan Contract dated as of October 3, 1999, and amendments thereto, with the State of California, acting by and through the State Water Resources Control Board, pursuant to which the City agreed to make certain loan payments in the aggregate principal amount of \$5,450,364 (the "1999 Wastewater Loan Payments") for the purpose of financing certain improvements to the Wastewater System, and

**WHEREAS**, for the Water System the City previously entered into:

(i) an Installment Purchase Agreement, dated as of November 1, 2005 (the "2005 Water Installment Purchase Agreement") with the Authority, pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$5,290,000 (the "2005 Water Installment Payments") for the purpose of financing and refinancing certain improvements to the Water System, and in connection therewith the Authority issued its Water and Water Revenue Bonds, Series 2005D (the "2005 Bonds"), pursuant to an Indenture, dated as of November 1, 2005, between the Authority and Union Bank of California, N.A. (now known as MUFG Union Bank, N.A.), as trustee; and

(ii) an Installment Purchase Agreement, dated as of March 27, 2008 (the "2008 Water Installment Purchase Agreement") with the Corporation, pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$2,511,170 (the "2008 Water Installment Payments") for the purpose of financing certain improvements to the Water System, and in

connection therewith the Corporation issued its 2008 Certificates of Participation (the "2008 Certificates"), pursuant to a Trust Agreement, dated March 27, 2008, among the Corporation, the City and the City Treasurer of the City of Calistoga, as trustee; and

(iii) an Installment Purchase Agreement, dated as of July 7, 2011 (the "2011 Water Installment Purchase Agreement") with the Corporation, pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$3,750,000 (the "2011 Water Installment Payments") for the purpose of financing certain improvements to the Water System, and in connection therewith the Corporation issued its 2011 Certificates of Participation (the "2011 Certificates"), pursuant to a Trust Agreement, dated July 7, 2011, among the Corporation, the City and the City Treasurer of the City of Calistoga, as trustee; and

**WHEREAS**, the City, after due investigation and deliberation, has determined that it is in the interests of the City at this time to provide for the refunding of (i) the 2001 Wastewater Installment Purchase Agreement and the 2005 Wastewater Installment Purchase Agreement of the Wastewater System, secured on parity with the 1999 Wastewater Loan Payments which will remain outstanding, and (ii) the 2005 Water Installment Purchase Agreement and 2008 Water Installment Purchase Agreement of the Water System, secured on parity with the 2011 Water Installment Payments which will remain outstanding (collectively as to the obligations refunded, the "Prior Obligations").

**WHEREAS**, the City has requested the Corporation to assist in the refinancing of the Prior Projects by entering into an Installment Sale Agreement with the City under which the Corporation will provide funding for the refinancing the Prior Obligations and to refinance and sell the Prior Projects to the City in consideration of the agreement by the City to pay the purchase price of the Prior Projects in semiannual installments (the "Installment Payments"); and

**WHEREAS**, for the purpose of obtaining the moneys required to refinance the Prior Projects in accordance with the terms hereof, the Corporation will assign and transfer certain of its rights under this Agreement to MUFJ Union Bank, N.A., as trustee (the "Trustee"), under a Trust Agreement (the "Trust Agreement"), among the Corporation, the City and the Trustee, under which the Trustee will execute and deliver its 2018 Water and Wastewater Revenue Certificates of Participation (the "Certificates"), evidencing direct, undivided fractional interests in the Installment Payments.

**WHEREAS**, the City has determined to sell the Certificates to Hilltop Securities Inc. (the "Original Purchaser") pursuant to the terms of a Purchase Agreement (the "Purchase Agreement") to be entered into by the City and the Original Purchaser with respect to the Certificates; and

**WHEREAS**, the City has caused to be prepared a preliminary Official Statement containing material information relating to the City and its wastewater and water enterprises and the Certificates, the preliminary form of which will be distributed by the Original Purchaser, as underwriter of the Certificates, to persons and institutions interested in purchasing the Certificates, the form of which is on file with the City Clerk; and

**WHEREAS**, the City Council of the City wishes at this time to authorize all proceedings relating to the execution and delivery of the Certificates, and to approve the execution and delivery of all agreements and documents relating thereto.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CALISTOGA AS FOLLOWS:**

**Section 1. Approval of Financing Documents.** The City Council hereby approves the issuance and sale of 2018 Water and Wastewater Revenue Certificates of Participation in the aggregate principal amount of not to exceed \$10,000,000 (the "Certificates") for the purpose of refinancing the Prior Projects outstanding obligations of the City related thereto. To that end, the City Council hereby

approves each of the following financing documents in substantially the respective forms on file with the City Clerk, together with any changes therein or additions thereto approved by the City Manager or Administrative Services Director (the "Authorized Officers"), whose execution thereof shall be conclusive evidence of such approval:

- Installment Sale Agreement, between the City and the Corporation, under which the Corporation agrees to provide financing for the Prior Projects, and to sell the completed Prior Projects to the City in consideration of the payment by the City of the Installment Payments as the purchase price, to be made from the net revenues of the Water System and the Wastewater System.
- Trust Agreement, between the City, the Corporation and the Trustee, under which the Trustee agrees to execute and deliver the Certificates and to apply the proceeds thereof as directed by the Corporation and the City.
- Escrow Agreement, between the City and the escrow bank named therein, under which the escrow bank agrees to hold certain proceeds of the Certificates and to use such proceeds for the refunding of the Prior Obligations previously issued by the Authority.

Each Authorized Officer is hereby authorized and directed for and in the name and on behalf of the City to execute the final form of each of the foregoing documents, and the City Clerk is hereby authorized and directed to attest to the final form of each of the foregoing documents. The schedule of Installment Payments attached to the Installment Sale Agreement shall correspond to the payments of principal and interest represented by the Certificates, to be determined upon the sale thereof as set forth in Section 2.

**Section 2. Sale of Certificates of Participation.** The City Council hereby approves the sale of the Certificates by negotiation with the Original Purchaser under a Purchase Contract between the City and the Underwriter in the form on file with the City Clerk, together with any changes therein or additions thereto approved by the City Manager, whose execution thereof shall be conclusive evidence of such approval. The amount of Underwriter's discount for the Certificates shall be not more than 0.75% of the par amount thereof and the net present value of savings achieved by sale of the Certificates shall be at least 3.00%.

**Section 3. Official Statement.** The City Council hereby approves and deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the Preliminary Official Statement describing the Certificates in the form on file with the City Clerk. Each Authorized Officer is hereby authorized, at the request of the Underwriter, to execute an appropriate certificate affirming the City Council's determination that the Preliminary Official Statement has been deemed nearly final within the meaning of such Rule. Distribution of the Preliminary Official Statement and the Final Official Statement by the Underwriter is hereby approved. The Final Official Statement shall be executed in the name and on behalf of the City by an Authorized Officer.

**Section 4. Official Actions.** The Mayor, the City Manager, the Administrative Services Director, the City Clerk and all other officers of the City, are authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, including but not limited to a continuing disclosure undertaking in substantially the form appended to the Preliminary Official Statement, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this Resolution any officer of the City is directed to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any

person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

**Section 5. Documents in Substantially Final Form; Further Authority.** The documents on file with the City Clerk and herein approved are in substantially final form; that is, they are final as to important business terms such as the rate covenant undertaken by the City as to the wastewater and water rates the City will maintain so long as the Certificates are outstanding, and parity bond restrictions, governing limitations on future issues of obligations secured by net revenues of the Wastewater System and Water System, but do not contain the numbers resulting from the sale of the Certificates, which numbers will be inserted once the Certificates are sold, or the provisions for a reserve account for the Certificates, which will be inserted into the Trust Agreement if the Authorized Officers determine, upon consultation with the Urban Futures, Inc., as the City’s Municipal Advisor and the Original Purchaser, that it is in the best interest of the City to utilize a reserve account in connection with the Certificates. This resolution is intended to be a “parameters resolution,” in which the City Council approves the sale, execution and delivery of the Certificates, within the parameters set forth in this Resolution.

The officers of this City are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution, including one or more escrow agreements, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 6. Municipal Bond Insurance and Surety Bond.** The Authorized Officers, each acting alone, are hereby authorized and directed to take all actions necessary to obtain a municipal bond insurance policy for the Certificates and/or a reserve account surety bond for the Certificates from a municipal bond insurance company if it is determined, upon consultation with the City’s Municipal Advisor and the Original Purchaser, that such municipal bond insurance policy and/or surety bond will create cost savings.

**Section 7. Delivery of Certificates.** The Certificates shall be delivered to the purchaser thereof. This City shall execute, and the Trustee shall authenticate and deliver the Certificates upon receipt of the purchase price and shall credit the proceeds as provided in the Trust Agreement.

**Section 8. Effective Date.** This Resolution shall take effect from and after the date of approval and adoption thereof.

**PASSED AND ADOPTED** by the City Council of the City of Calistoga at a meeting thereof held on the 17<sup>th</sup> day of April, 2018.

**AYES:** Councilmembers Kraus, Barnes and Lopez-Ortega, Vice Mayor Dunsford and Mayor Canning  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

  
\_\_\_\_\_  
**CHRIS CANNING, Mayor**

**ATTEST:**  
  
**KATHY FLAMSON, City Clerk**