

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AND AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF LETTER OF CREDIT REIMBURSEMENT AGREEMENTS RELATING TO THE CITY OF SAN JOSE FINANCING AUTHORITY LEASE REVENUE BONDS, SERIES 2008B (CIVIC CENTER GARAGE REFUNDING PROJECT), APPROVING THE REMARKETING MEMORANDUM RELATING THERETO, AND AUTHORIZING OTHER RELATED ACTIONS**

**WHEREAS**, the City of San José (the "City") and the Redevelopment Agency of the City of San José have heretofore entered into a Joint Exercise of Powers Agreement establishing the City of San José Financing Authority (the "Authority") for the purpose, among others, of having the Authority issue its instruments of debt to finance and refinance the acquisition, construction and improvement of certain public capital improvements; and

**WHEREAS**, the Authority has heretofore determined to adopt and implement a program under which the Authority will provide financing and refinancing for certain public capital improvements for the City; and

**WHEREAS**, on July 10, 2008, pursuant to the provisions of Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code and an Indenture of Trust dated as of July 1, 2008 (the "Indenture"), between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"), the Authority issued its \$36,580,000 initial aggregate principal amount of City of San José Financing Authority Lease Revenue Bonds, Series 2008B (Civic Center Garage Refunding Project) (the "Series 2008B Bonds") in order to refinance the City's acquisition and construction of a parking garage located across from the City's Civic Center at 50 North Fourth Street and certain other improvements related to the City's Civic Center; and

**WHEREAS**, concurrently with the delivery of the Series 2008B Bonds, the Authority and the City caused to be delivered to the Trustee an irrevocable direct-pay letter of credit (the "Credit Facility") issued severally, but not jointly, by Bank of America, N.A., and the California State Teachers' Retirement System (collectively, the "Credit Provider") in order to provide support for the payment of the principal of and interest on the Series 2008B Bonds, and the purchase price of the Series 2008B Bonds upon the optional or mandatory tender thereof; and

**WHEREAS**, the Authority and the City now desire to deliver to the Trustee an irrevocable direct-pay letter of credit (the "Series 2008B-1 Credit Facility") issued by Bank of America, N.A. (the "Series 2008B-1 Credit Provider"), and an irrevocable direct-pay letter of credit (the "Series 2008B-2 Credit Facility") issued by Union Bank, N.A. (the "Series 2008B-2 Credit Provider"), in substitution for the Credit Facility initially delivered by the Credit Provider; and

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**WHEREAS**, in connection with the issuance and delivery of the Series 2008B-1 Credit Facility, the Authority and the City will enter into a Letter of Credit Reimbursement Agreement (the "Series 2008B-1 Credit Agreement") and an agreement related to the payment of fees in connection with the Series 2008B-1 Credit Facility (the "Series 2008B-1 Fee Agreement") with the Series 2008B-1 Credit Provider; and

**WHEREAS**, in connection with the issuance and delivery of the Series 2008B-2 Credit Facility, the Authority and the City will enter into a Letter of Credit Reimbursement Agreement (the "Series 2008B-2 Credit Agreement") and an agreement related to the payment of fees in connection with the Series 2008B-2 Credit Facility (the "Series 2008B-2 Fee Agreement") with the Series 2008B-2 Credit Provider; and

**WHEREAS**, in connection with the issuance and delivery of the Series 2008B-1 Credit Facility and the Series 2008B-2 Credit Facility, the Authority is supplementing and amending the Indenture pursuant to a First Supplemental Indenture of Trust (the "First Supplemental Indenture") between the Authority and the Trustee in order to revise certain provisions of the Indenture, including the re-designation of the Series 2008B Bonds into two series known as the "Series 2008B-1 Bonds" and the "Series 2008B-2 Bonds", to allow for the delivery of two separate irrevocable direct-pay letters of credit from two different banks as credit and liquidity support for the Series 2008B-1 Bonds and the Series 2008B-2 Bonds; and

**WHEREAS**, in connection with the execution and delivery of the First Supplemental Indenture, the Authority and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as successor by merger to Banc of America Securities LLC, as the remarketing agent for the Series 2008B Bonds (the "Remarketing Agent"), will enter into a First Supplement to Remarketing Agreement (the "First Supplement to Remarketing Agreement") with the Authority in order to allow the Series 2008B-1 Bonds and the Series 2008B-2 Bonds to be remarketed in accordance with the provisions of the First Supplemental Indenture; and

**WHEREAS**, there has been prepared a form of Remarketing Memorandum to be used in connection with the remarketing of the Series 2008B-1 Bonds and the Series 2008B-2 Bonds by the Remarketing Agent in order to update certain information relating to the Series 2008B-1 Bonds and the Series 2008B-2 Bonds; and

**WHEREAS**, the City Council has duly considered such transactions and wishes at this time to approve certain matters relating to said transactions in the public interest of the City;

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

**Section 1. Approval of Series 2008B-1 Credit Facility, Series 2008B-1 Credit Agreement and Series 2008B-1 Fee Agreement.** The City Council hereby approves the use of the Series 2008B-1 Credit Facility to provide credit and liquidity support for the Series 2008B-1 Bonds and authorizes the City Manager of the City (the "City Manager"), the Assistant Director of Finance of the City or the authorized designees of the City Manager (each, a "Designated Officer"), each acting alone, to take all actions as they deem necessary to ensure the delivery of the Series 2008B-1 Credit Facility by the Series 2008B-1 Credit Provider. The

City Council hereby approves the Series 2008B-1 Credit Agreement and the Series 2008B-1 Fee Agreement in the forms posted on the agenda webpage for this joint meeting of the Authority and the City, together with such additions thereto and changes therein as the Designated Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney, the execution of which by the City shall be conclusive evidence of the approval of any such additions and changes. The Designated Officers, each acting alone, are hereby authorized to execute and deliver the final form of the Series 2008B-1 Credit Agreement and the Series 2008B-1 Fee Agreement, in the name of and on behalf of the City. The City Council hereby authorizes the performance by the City of its obligations under both the Series 2008B-1 Credit Agreement and the Series 2008B-1 Fee Agreement.

The City Council hereby authorizes the Designated Officers, each acting alone, to execute and deliver one or more extensions to the Series 2008B-1 Credit Facility or the commitment available under the Series 2008B-1 Credit Agreement for any duration of time that they deem necessary, advisable or prudent, without the approval of this City Council, provided that no such extension shall require an annual fee in excess of 2.50% of the commitment available under the Series 2008B-1 Credit Agreement if the Series 2008B-1 Bonds have an underlying rating of not less than A3/A-/A- by Moody's Investors Service, Inc., Standard & Poor's Rating Services and Fitch Ratings, respectively.

**Section 2. Approval of Series 2008B-2 Credit Facility, Series 2008B-2 Credit Agreement and Series 2008B-2 Fee Agreement.** The City Council hereby approves the use of the Series 2008B-2 Credit Facility to provide credit and liquidity support for the Series 2008B-2 Bonds and authorizes the Designated Officers, each acting alone, to take all actions as they deem necessary to ensure the delivery of the Series 2008B-2 Credit Facility by the Series 2008B-2 Credit Provider. The City Council hereby approves the Series 2008B-2 Credit Agreement and the Series 2008B-2 Fee Agreement in the forms posted on the agenda webpage for this joint meeting of the Authority and the City, together with such additions thereto and changes therein as the Designated Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney, the execution of which by the City shall be conclusive evidence of the approval of any such additions and changes. The Designated Officers, each acting alone, are hereby authorized to execute and deliver the final form of the Series 2008B-2 Credit Agreement and the Series 2008B-2 Fee Agreement, in the name of and on behalf of the City. The City Council hereby authorizes the performance by the City of its obligations under both the Series 2008B-2 Credit Agreement and the Series 2008B-2 Fee Agreement.

The City Council hereby authorizes the Designated Officers, each acting alone, to execute and deliver one or more extensions to the Series 2008B-2 Credit Facility or the commitment available under the Series 2008B-2 Credit Agreement for any duration of time that they deem necessary, advisable or prudent, without the approval of this City Council, provided that no such extension shall require an annual fee in excess of 2.50% of the commitment available under the Series 2008B-2 Credit Agreement if the Series 2008B-2 Bonds have an underlying rating of not less than A3/A-/A- by Moody's Investors Service, Inc., Standard & Poor's Rating Services and Fitch Ratings, respectively.

**Section 3. Remarketing Memorandum.** The City Council hereby approves the form of the Remarketing Memorandum posted on the agenda webpage for this joint meeting of the Authority and the City, together with such changes or additions thereto as the Designated

Officers, each acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney. The Designated Officers, each acting alone, are hereby authorized to execute the final form of the Remarketing Memorandum with such changes or additions as the Designated Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney, and the execution of the final Remarketing Memorandum by the City shall be conclusive evidence of the approval of any such additions and changes. The City Council hereby authorizes the distribution of the final Remarketing Memorandum by the Remarketing Agent.

**Section 4. Official Actions.** The Designated Officers, the City Clerk of the City and any and all other officers of the Authority are hereby authorized and directed, for and in the name of 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 documents, assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and documents, which they, or any of them, may deem necessary or advisable in connection with the execution and delivery of the First Supplemental Indenture, the Series 2008B-1 Credit Agreement, the Series 2008B-1 Fee Agreement, the Series 2008B-2 Credit Agreement, the Series 2008B-2 Fee Agreement and the First Supplement to Remarketing Agreement, and the remarketing of the Series 2008B-1 Bonds and the Series 2008B-2 Bonds.

ADOPTED this 5<sup>th</sup> day of October, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk