

RESOLUTION NO. 73950

A FIFTEENTH SUPPLEMENTAL RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING THE FORMS OF FIFTH SUPPLEMENTAL TRUST AGREEMENT, PRELIMINARY OFFICIAL STATEMENT, FINAL OFFICIAL STATEMENT, BOND PURCHASE AGREEMENT, CONTINUING DISCLOSURE CERTIFICATE AND ONE OR MORE ESCROW AGREEMENTS; PROVIDING FOR THE ISSUANCE OF CITY OF SAN JOSE AIRPORT REVENUE BONDS, SERIES 2007A, SERIES 2007B, SERIES 2007C REFUNDING AND SERIES 2007D REFUNDING IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$825,000,000; PRESCRIBING THE TERMS, CONDITIONS AND FORM OF SAID SERIES OF BONDS; DECLARING THE OFFICIAL INTENT OF THE CITY TO REIMBURSE CERTAIN EXPENDITURES FROM PROCEEDS OF INDEBTEDNESS; AND AUTHORIZING AND APPROVING OTHER RELATED ACTIONS

WHEREAS, the Council (the "Council") of the City of San José (the "City"), a municipal corporation and political subdivision duly organized and validly existing under the Constitution of the State of California and the Charter of the City, duly adopted Resolution No. 70532 on June 26, 2001, approving the Master Trust Agreement dated as of July 1, 2001 (the "Master Agreement") between the City and The Bank of New York Trust Company, N.A., as successor to BNY Western Trust Company, as trustee (the "Trustee"), providing for the issuance of City of San José Airport Revenue Bonds, and amending and restating Resolution No. 57794 and the supplemental resolutions thereto (collectively, the "Prior Resolution"); and

WHEREAS, the City has previously issued under the Prior Resolution and the Master Agreement its Airport Revenue Bonds, Series of 1992, its Airport Revenue Bonds, Series of 1993, its Airport Revenue Bonds, Series of 1994, its Airport Revenue Refunding Bonds, Series 1998A, its Airport Revenue Bonds, Series 2001A, its Airport Revenue Refunding Bonds, Series 2002A and 2002B, its Airport Revenue Bonds, Series 2004A, 2004B, 2004C and 2004D (collectively, the "2004 Bonds"); and

WHEREAS, the City has heretofore issued its currently outstanding San José International Airport Subordinated Commercial Paper Notes and may issue additional such notes (the "Notes"); and

WHEREAS, capitalized terms not otherwise defined in this Resolution shall have the meanings specified in the Master Agreement; and

WHEREAS, the Master Agreement provides that the City may issue Additional Bonds under the Master Agreement from time to time as the issuance thereof is

authorized by the City by a Supplemental Trust Agreement, subject to the conditions and limitations contained in the Law and in Article III of the Master Agreement; and

WHEREAS, the City is not in default under the Master Agreement or any Supplemental Trust Agreement; and

WHEREAS, it is now desirable, necessary and in the best interests of the City to authorize the issuance of up to four series of Additional Bonds in a total aggregate principal amount of not to exceed \$825,000,000, to be designated as the "City of San José Airport Revenue Bonds, Series 2007A" (the "2007A Bonds"), the "City of San José Airport Revenue Bonds, Series 2007B" (the "2007B Bonds"), the "City of San José Airport Revenue Bonds, Series 2007C Refunding" (the "2007C Bonds"), the "City of San José Airport Revenue Bonds, Series 2007D Refunding" (the "2007D Bonds" and collectively with the 2007A Bonds, the 2007B Bonds and the 2007C Bonds, the "2007 Bonds"), respectively, for the purpose of financing and refinancing a portion of the costs of designing and constructing certain improvements (the "2007 Projects") to the Norman Y. Mineta San José International Airport (the "Airport"), including the interest on the 2007A Bonds and the 2007B Bonds through completion of the various components of the projects funded by the 2007A and the 2007B Bonds, funding a portion of the interest on the City's Airport Revenue Bonds, Series 2004A, Series 2004B, Series 2004C and Series 2004D through completion of the various components of the projects funded by the 2004 Bonds, funding trustee, broker-dealer and auction agent fees in connection with the City's Airport Revenue Bonds, Series 2004A and Series 2004B through July 1, 2010, funding any required cash or reserve fund surety bond deposit to the Bond Reserve Fund (as such term is defined in the Master Agreement), paying costs of issuance of the 2007 Bonds, including premiums for bond insurance and a reserve fund surety bond policy, if any, refunding all or a portion of the outstanding Series 1998A Bonds and Series 2001A Bonds (the "Refunded Bonds"), and refunding all or a portion of the outstanding Notes, and this Council has determined that the 2007 Bonds in an aggregate principal amount of not to exceed \$825,000,000 should be issued pursuant to the Master Agreement and the Fifth Supplemental Trust Agreement in the form on file with the City Clerk and made a part hereof (the "Fifth Supplemental Agreement"); and

WHEREAS, there has been prepared a form of Preliminary Official Statement relating to the 2007 Bonds (the "Preliminary Official Statement"), a form of Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"), a form of Bond Purchase Agreement (the "Bond Purchase Agreement"), to be entered into by the City and the purchaser of the 2007 Bonds, and a form of Escrow Agreement (the "Escrow Agreement"), to be entered into by the City and the Trustee, as escrow agent, to provide for the refunding of each series of the Refunded Bonds; and a Guaranty Agreement between Ambac Assurance Corporation (the "Bond Insurer") and the City related to the reserve fund surety bond (the "Insurer Agreement"); and

WHEREAS, the conditions and limitations contained in the Law and in Article III of the Master Agreement have been satisfied or will be satisfied at the time of the issuance of the 2007 Bonds; and

WHEREAS, the interest on the 2007 Bonds may qualify for exclusion from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986 (the "Code") only if certain requirements are met by the City, including that such 2007 Bonds are approved in accordance with Section 147(f) of the Code; and

WHEREAS, this Council is the elected legislative body of the City and is the applicable elected representative required to approve the 2007 Bonds for purposes of Section 147(f) of the Code; and

WHEREAS, a notice of public hearing with respect to the 2007 Bonds to be issued by the City was published not less than fourteen (14) days prior to said public hearing in a newspaper of general circulation available to the residents of the City; and

WHEREAS, a public hearing was held pursuant to such notice before this Council on August 14, 2007, and an opportunity was provided for interested persons to present arguments for and against the issuance of such 2007 Bonds, and the nature and location of the 2007 Projects and certain other improvements to be made at the Airport (collectively, the "Airport Projects") to be financed and refinanced with the proceeds thereof pursuant to a plan of financing; and

WHEREAS, pursuant to the plan of financing, the City intends to finance and refinance the projects, programs, facilities and improvements owned, operated and/or managed by the City comprising the Airport Projects, including without limitation the acquisition, construction, equipping, financing, reconstruction, development, and modification of airport terminal and ancillary facilities which are included in or are consistent with the Airport Master Plan for the Airport, including without limitation completion of the North Concourse facility, partial construction of a new Terminal B, construction of a rental car garage including public parking, modifications to the existing Terminal A, demolition of the existing Terminal C and improvement and realignment of existing roadways and bridges; together with related costs and expenses, with all such components of the Airport Projects expected to be located at the Airport or on property leased by the City for Airport purposes located at 1125 Coleman Avenue and 328 West Brokaw Road in the Cities of San José and Santa Clara, California, respectively; and

WHEREAS, it is expected that the payment of principal of and interest on all or a portion of the 2007 Bonds will be supported by a financial guaranty insurance policy ("Bond Insurance") issued by the Bond Insurer, and that all or a portion of any required deposit in the Bond Reserve Fund may be satisfied by a reserve fund surety bond policy ("Surety Bond") issued by the Bond Insurer; and

WHEREAS, the City expects to pay certain expenditures (the "Reimbursement Expenditures") in connection with the Airport Projects prior to the issuance of bond indebtedness (including the 2007 Bonds) which will be issued to pay a portion of the costs associated with the Airport Projects; and

WHEREAS, the City is authorized to incur or issue debt obligations and reasonably expects that debt obligations in an amount not expected to exceed \$825,000,000 (composed of tax-exempt revenue bonds) will be issued pursuant to a plan of financing to finance and refinance the Airport Projects and that certain of the proceeds of such debt obligations will be used to reimburse the Reimbursement Expenditures; and

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the City to declare its reasonable official intent to reimburse prior expenditures for the Airport Projects with proceeds of subsequent borrowings; and

WHEREAS, some or all of the debt obligations to be issued may constitute "private activity bonds" within the meaning of the Code, and in such case, the City intends that such obligations constitute qualified exempt facility bonds within the meaning of Sections 141 and 142 of the Code; and

WHEREAS, pursuant to the Treasury Regulations, the Council must adopt a bond resolution or take some other official action toward the issuance of the debt obligations prior to the commencement of the construction, reconstruction or acquisition of the facilities in order for such facilities to constitute exempt facilities within the meaning of the Code;

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

SECTION 1. Recitals True and Correct. The Council finds and determines that the foregoing recitals are true and correct.

SECTION 2. Approval of Forms of Documents. The proposed Fifth Supplemental Agreement, Bond Purchase Agreement, Continuing Disclosure Certificate, Escrow Agreement for each series of Refunded Bonds and Insurer Agreement, in substantially the forms on file with the City Clerk, are hereby approved and adopted.

SECTION 3. Execution and Delivery of Documents. Upon the advice of the City Attorney, the Director of Finance of the City is hereby authorized to execute and deliver the Fifth Supplemental Agreement, the Bond Purchase Agreement, the Continuing Disclosure Certificate, the Escrow Agreement for each series of Refunded Bonds and the Insurer Agreement, all in substantially the forms on file with the City Clerk, with such changes, corrections, revisions or additions thereto as are deemed necessary and desirable to accomplish the purposes hereof.

SECTION 4. Approval of Form of 2007 Bonds Preliminary Official Statement. The proposed form of 2007 Bonds Preliminary Official Statement substantially in the form presented to this meeting, is hereby approved. The Director of Finance and the Director of Aviation are each hereby authorized to deliver the 2007 Bonds Preliminary

Official Statement in substantially said form, with such changes, modifications and additions thereto as the Director of Finance and the Director of Aviation may approve upon consultation with the City Attorney, such approval to be evidenced conclusively by the delivery by the Director of Finance and the Director of Aviation of said 2007 Bonds Preliminary Official Statement as so added to or changed. The Director of Finance and the Director of Aviation are each hereby further authorized to deliver or cause to be delivered a final 2007 Bonds Official Statement, in substantially the form of said 2007 Bonds Preliminary Official Statement, with such changes and additions thereto as the Director of Finance and the Director of Aviation may approve upon consultation with the City Attorney, such approval to be evidenced conclusively by the delivery by the Director of Finance and the Director of Aviation of said final 2007 Bonds Official Statement as so added to or changed. The Director of Finance and the Director of Aviation are each hereby authorized to certify that the 2007 Bonds Preliminary Official Statement is, as of its date, "deemed final" within the meaning of Rule 15c2-12 of the Securities and Exchange Commission.

SECTION 5. Issuance of 2007A Bonds. A series of Additional Bonds to be issued under Article III of the Master Agreement and pursuant to the Fifth Supplemental Agreement, is hereby authorized in a total aggregate principal amount of not to exceed \$825,000,000 less the aggregate principal amount of 2007B Bonds, 2007C Bonds and 2007D Bonds issued, and such Additional Bonds shall be designated as the "City of San José Airport Revenue Bonds, Series 2007A." The terms of the 2007A Bonds shall be as set forth in Appendix A-11 to the Fifth Supplemental Agreement and the form thereof shall be as set forth in Appendix B-11 to the Fifth Supplemental Agreement, and the same are hereby incorporated by reference as if fully set forth herein. As provided in Section 3.03 of the Master Agreement, upon the execution of the Fifth Supplemental Agreement and the issuance and delivery of the 2007A Bonds, such Appendices A-11 and B-11 shall be attached to the Master Agreement and shall thereafter become a part of such document. The 2007A Bonds are hereby designated as Tax-Exempt Bonds and shall mature no later than March 1, 2047.

SECTION 6. Issuance of 2007B Bonds. A series of Additional Bonds to be issued under Article III of the Master Agreement and pursuant to the Fifth Supplemental Agreement, is hereby authorized in a total aggregate principal amount of not to exceed \$825,000,000 less the aggregate principal amount of 2007A Bonds, 2007C Bonds and 2007D Bonds issued, and such Additional Bonds shall be designated as the "City of San José Airport Revenue Bonds, Series 2007B." The terms of the 2007B Bonds shall be as set forth in Appendix A-12 to the Fifth Supplemental Agreement and the form thereof shall be as set forth in Appendix B-12 to the Fifth Supplemental Agreement, and the same are hereby incorporated by reference as if fully set forth herein. As provided in Section 3.03 of the Master Agreement, upon the execution of the Fifth Supplemental Agreement and the issuance and delivery of the 2007B Bonds, such Appendices A-12 and B-12 shall be attached to the Master Agreement and shall thereafter become a part of such document. The 2007B Bonds are hereby designated as Tax-Exempt Bonds and shall mature no later than March 1, 2047.

SECTION 7. Issuance of 2007C Bonds. A series of Additional Bonds to be issued under Article III of the Master Agreement and pursuant to the Fifth Supplemental Agreement, is hereby authorized in a total aggregate principal amount of not to exceed \$825,000,000 less the aggregate principal amount of 2007A Bonds, 2007B Bonds and 2007D Bonds issued, and such Additional Bonds shall be designated as the “City of San José Airport Revenue Bonds, Series 2007C Refunding.” The terms of the 2007C Bonds shall be as set forth in Appendix A-12 to the Fifth Supplemental Agreement and the form thereof shall be as set forth in Appendix B-12 to the Fifth Supplemental Agreement, and the same are hereby incorporated by reference as if fully set forth herein. As provided in Section 3.03 of the Master Agreement, upon the execution of the Fifth Supplemental Agreement and the issuance and delivery of the 2007C Bonds, such Appendices A-12 and B-12 shall be attached to the Master Agreement and shall thereafter become a part of such document. The 2007C Bonds are hereby designated as Tax-Exempt Bonds and shall mature no later than March 1, 2031.

SECTION 8. Issuance of 2007D Bonds. A series of Additional Bonds to be issued under Article III of the Master Agreement and pursuant to the Fifth Supplemental Agreement, is hereby authorized in a total aggregate principal amount of not to exceed \$825,000,000 less the aggregate principal amount of 2007A Bonds, 2007B Bonds and 2007C Bonds issued, and such Additional Bonds shall be designated as the “City of San José Airport Revenue Bonds, Series 2007D Refunding.” The terms of the 2007D Bonds shall be as set forth in Appendix A-11 to the Fifth Supplemental Agreement and the form thereof shall be as set forth in Appendix B-11 to the Fifth Supplemental Agreement, and the same are hereby incorporated by reference as if fully set forth herein. As provided in Section 3.03 of the Master Agreement, upon the execution of the Fifth Supplemental Agreement and the issuance and delivery of the 2007D Bonds, such Appendices A-11 and B-11 shall be attached to the Master Agreement and shall thereafter become a part of such document. The 2007D Bonds are hereby designated as Tax-Exempt Bonds and shall mature no later than March 1, 2018.

SECTION 9. Parameters of Issuance for the 2007 Bonds. The 2007 Bonds shall bear interest at fixed interest rates at a true interest cost not to exceed 6.0% per annum, and the total compensation to the purchaser of the 2007 Bonds shall not exceed 0.4% of the par value of the 2007 Bonds.

SECTION 10. Trustee. The Bank of New York Trust Company, N.A. is hereby approved as the trustee under the Fifth Supplemental Agreement for each series of the 2007 Bonds, effective with the delivery of each such series.

SECTION 11. Bond Insurance and Surety Bond. The Council hereby approves the purchase of Bond Insurance and Surety Bond from the Bond Insurer, and authorizes the Director of Finance to take all actions the Director deems necessary to ensure the delivery of such Bond Insurance and in the event that the Director of Finance determines that the purchase of a surety bond for the reserve fund is to the City’s economic advantage, a Surety Bond by the Bond Insurer in connection with the issuance of the 2007 Bonds, including the execution and delivery of the Insurer Agreement. The Director of Finance is also hereby authorized and directed to

determine which, if any, of the 2007 Bonds shall be supported by such Bond Insurance based on the cost of such Bond Insurance and the interest savings on the 2007 Bonds resulting from such Bond Insurance.

SECTION 12. Ratification and Approval of Actions. The City Manager, the Director of Finance, the Director of Aviation, the City Clerk, the City Attorney, and the designees of any of them, are hereby authorized to execute and deliver any and all certificates, agreements, representations and opinions, as may be acceptable to the City Attorney, including the letter of representations to the bond depository, insurance, reimbursement and financial guaranty agreements with municipal bond insurers and surety bond providers, forward purchase agreements, investment agreements, signature certificates, no-litigation certificates, tax certificates, and other certificates proposed to be delivered in connection with the execution and delivery of the Fifth Supplemental Agreement, and the sale of each series of 2007 Bonds, including all certifications required to be provided pursuant to Article III of the Master Agreement, as are deemed to be necessary and desirable to accomplish the transactions contemplated herein.

Authorization granted to the Director of Finance, the Director of Aviation or the City Manager in this Resolution includes their authorized designees. All action previously taken by the City's officers, employees and agents in furtherance of the transactions contemplated herein, are hereby ratified and approved.

SECTION 13. Approval of 2007 Bonds and Plan of Financing. It is the purpose and intent of the Council that this Resolution constitutes the approval of (a) the 2007 Bonds by the appropriate applicable elected representative for purposes of, and in accordance with, Section 147(f) of the Code, and (b) a plan of financing for the issuance of tax-exempt revenue bonds in an amount not expected to exceed \$825,000,000 in order to finance and refinance the Airport Projects.

SECTION 14. Declaration of Official Intent. The City hereby declares its official intent to use proceeds of indebtedness to reimburse itself for Reimbursement Expenditures. This declaration of official intent and the approval of the plan of financing are made solely for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations and Section 147(f) of the Code, respectively, and do not bind the City to make any expenditure, incur any indebtedness or proceed with the Airport Projects or any portion thereof. This declaration shall take effect from and after the adoption of this Resolution.

SECTION 15. Section Headings and References. The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Fifteenth Supplemental Resolution.

SECTION 16. Repeal of Inconsistent Resolutions. Any resolution of the City, and any part of any resolution, inconsistent with this Resolution, the Master Agreement and the Fifth Supplemental Agreement, is hereby repealed to the extent of such inconsistency.

SECTION 17. Effective Date of Fifteenth Supplemental Resolution. This Fifteenth Supplemental Resolution shall take effect from and after its adoption.

ADOPTED this fourteenth day of August, 2007, by the following vote:

AYES: CAMPOS, CONSTANT, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: NONE

DISQUALIFIED: CHIRCO, CHU

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

CITY CLERK'S CERTIFICATE

I, LEE PRICE, City Clerk of the City of San José, hereby certify as follows:

The attached is a full, true and correct copy of a resolution duly adopted at a regular meeting of the City Council of said City duly and regularly held at the San José City Hall, 200 East Santa Clara Street, San José, California, the regular meeting place thereof, on August 14, 2007, and entered in the minutes thereof, of which meeting all of the members of said City Council had due notice and at which a quorum thereof was present; and at said meeting said resolution was adopted by the following vote:

AYES: CAMPOS, CONSTANT, CORTESE,
LICCARDO, NGUYEN, OLIVERIO,
PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: NONE

DISQUALIFIED: CHIRCO, CHU

An agenda of said meeting was posted at least 72 hours before said meeting at 200 East Santa Clara Street, San José, California, a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

I have carefully compared the same with the original minutes of said meeting on file and of record in my office. Said resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

Dated: August 14, 2007.

LEE PRICE, MMC
City Clerk of the
City of San José,
California

(Seal)

COUNCIL OF THE CITY OF SAN JOSE

RESOLUTION NO. _____

A FIFTEENTH SUPPLEMENTAL RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING THE FORMS OF FIFTH SUPPLEMENTAL TRUST AGREEMENT, PRELIMINARY OFFICIAL STATEMENT, FINAL OFFICIAL STATEMENT, BOND PURCHASE AGREEMENT, CONTINUING DISCLOSURE CERTIFICATE AND ONE OR MORE ESCROW AGREEMENTS; PROVIDING FOR THE ISSUANCE OF CITY OF SAN JOSE AIRPORT REVENUE BONDS, SERIES 2007A, SERIES 2007B SERIES 2007C REFUNDING AND SERIES 2007D REFUNDING IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$825,000,000; PRESCRIBING THE TERMS, CONDITIONS AND FORM OF SAID SERIES OF BONDS; DECLARING THE OFFICIAL INTENT OF THE CITY TO REIMBURSE CERTAIN EXPENDITURES FROM PROCEEDS OF INDEBTEDNESS; AND AUTHORIZING AND APPROVING OTHER RELATED ACTIONS

Adopted: August 14, 2007
