

RESOLUTION NO. 74402

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING, AUTHORIZING AND DIRECTING EXECUTION OF CERTAIN FINANCING DOCUMENTS AND DIRECTING CERTAIN RELATED ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE CITY OF SAN JOSE FINANCING AUTHORITY LEASE REVENUE BONDS, SERIES 2008C (HAYES MANSION REFUNDING PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$11,000,000 AND THE CITY OF SAN JOSE FINANCING AUTHORITY TAXABLE LEASE REVENUE BONDS, SERIES 2008D (HAYES MANSION REFUNDING PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$48,000,000

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 bonds to finance 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 for certain public capital improvements for the City of San José (the “City”); and

WHEREAS, the Authority has heretofore issued the following series of bonds (collectively, the “2001 Bonds”):

- City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2001B (Hayes Mansion Phase III Improvement and Refunding Project) initially issued in the amount of \$24,000,000;
- City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2001C (Hayes Mansion Phase III Improvement and Refunding Project) initially issued in the amount of \$18,500,000; and
- City of San José Financing Authority Tax Exempt Lease Revenue Bonds, Series 2001D (Hayes Mansion Phase III Improvement and Refunding Project) initially issued in the amount of \$10,800,000; and

WHEREAS, the 2001 Bonds were issued for the purpose of providing funds to pay the costs of certain improvements to the Hayes Mansion Conference Center (the “Project”), to finance the construction of a public parking facility and certain park improvements and to refund in full the following bonds:

- City of San José Financing Authority (Hayes Mansion Improvement Project) 1995 Lease Revenue Bonds, Taxable Series A issued in the initial aggregate principal amount of \$19,365,000, and

- City of San José Financing Authority (Hayes Mansion Improvement Project) 1995 Lease Revenue Bonds, Tax Exempt Series B, issued in the initial aggregate principal amount of \$2,945,000; and

WHEREAS, the Authority now intends to issue two series of its lease revenue bonds under the provisions of Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), to be designated "City of San José Financing Authority Lease Revenue Bonds, Series 2008C (Hayes Mansion Refunding Project)" (the "Series 2008C Bonds") and "City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008D (Hayes Mansion Refunding Project)" (the "Series 2008D Bonds" and, together with the Series 2008C Bonds, the "Series 2008C/D Bonds") in order to refund the 2001 Bonds in full; and

WHEREAS, pursuant to a Project Lease between the Authority, as lessor, and the City, as lessee (the "Project Lease"), the Authority will lease the Project to the City, and the City, pursuant to the Project Lease, will pay to the Authority lease payments (the "Lease Payments") for the use and occupancy of the Project sufficient to pay the principal of and interest and premium, if any, on the Series 2008C/D Bonds (or to reimburse the Credit Provider, as hereinafter defined, for drawings on the Credit Facility, as hereinafter defined, used to pay debt service on the Series 2008C/D Bonds), and certain related expenses; and

WHEREAS, the Series 2008C/D Bonds will initially be issued as variable rate bonds bearing interest at a weekly interest rate; and

WHEREAS, the Authority and the City desire to provide credit and liquidity support for the Series 2008C/D Bonds and, to that end, the Authority and the City will obtain an irrevocable direct-pay letter of credit for the Series 2008C Bonds and an irrevocable direct-pay letter of credit for the Series 2008D Bonds (collectively, the "Credit Facility") issued severally, but not jointly, by The Bank of Nova Scotia, acting through its New York Agency, and the California State Teachers' Retirement System (collectively, the "Credit Provider") to support the payment of debt service on the Series 2008C/D Bonds and the payment of the purchase price of the Series 2008C/D Bonds upon their optional or mandatory tender, as provided in the Credit Facility and the Indenture of Trust (the "Indenture") between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"); and

WHEREAS, in connection with the issuance and delivery of the Credit Facility, the Authority and the City will enter into a Letter of Credit Reimbursement Agreement (the "Credit Agreement") and one or more agreements related to the payment of fees in connection with the Credit Facility (collectively, the "Fee Agreement") with the Credit Provider; and

WHEREAS, the Series 2008C Bonds will be sold by negotiated sale, and the proposed form of the Purchase Contract (the "Series 2008C Purchase Contract") relating to the Series 2008C Bonds by and among the Authority, the City and Citigroup Global Markets Inc. (the "Series 2008C Underwriter") relating to the purchase of the Series 2008C Bonds by the Series 2008C Underwriter has been presented to the Authority, together with the proposed form of the Official Statement for the Series 2008C/D Bonds (the "Official Statement") containing information to be used in connection with the marketing of the Series 2008C Bonds by the Series 2008C Underwriter; and

WHEREAS, the Series 2008D Bonds will be sold by negotiated sale, and the proposed form of the Purchase Contract (the “Series 2008D Purchase Contract”) relating to the Series 2008D Bonds by and among the Authority, the City and Lehman Brothers Inc. (the “Series 2008D Underwriter”) relating to the purchase of the Series 2008D Bonds by the Series 2008D Underwriter has been presented to the Authority, together with the proposed form of the Official Statement containing information to be used in connection with the marketing of the Series 2008D Bonds by the Series 2008D Underwriter; 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. Findings and Determinations. Pursuant to the Act, the City Council hereby confirms its findings and determinations that the improvements to be financed or refinanced with the proceeds of the Series 2008C/D Bonds constitute “public capital improvements” and that the issuance of the Series 2008C/D Bonds and the transactions related thereto will result in significant public benefits within the contemplation of Section 6586 of the Act.

Section 2. Sale of Series 2008C Bonds. The City Council hereby approves the sale of the Series 2008C Bonds by the Authority by negotiation with the Series 2008C Underwriter pursuant to the Series 2008C Purchase Contract in the form on file with the City Clerk of the City (the “City Clerk”), together with such additions thereto and changes therein as the City Manager of the City or the authorized designees of the City Manager (each, a “Designated Officer”) 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 and directed to execute the final form of the Series 2008C Purchase Contract for and in the name of and on behalf of the City upon the submission of an offer by the Series 2008C Underwriter to purchase the Series 2008C Bonds, which offer is acceptable to the Designated Officers and consistent with the requirements of this Resolution, provided that the amount of Series 2008C Underwriter’s discount for the Series 2008C Bonds shall not exceed 0.60% of the par amount thereof. The final maturity of the Series 2008C Bonds shall be no later than June 1, 2027, and the total aggregate principal amount of the Series 2008C Bonds issued shall not exceed \$11,000,000. The takedown fee paid to the Underwriter for the Series 2008C Bonds shall not exceed \$1.50/\$1,000 of the par amount issued. The City Council hereby authorizes the performance by the City of its obligations under the Series 2008C Purchase Contract.

Section 3. Sale of Series 2008D Bonds. The City Council hereby approves the sale of the Series 2008D Bonds by the Authority by negotiation with the Series 2008D Underwriter pursuant to the Series 2008D Purchase Contract in the form on file with the City Clerk of 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 and directed to execute the final form of the Series 2008D Purchase Contract for and in the name of and on behalf of the City upon the submission of an offer by the Series 2008D Underwriter to purchase the Series 2008D Bonds, which offer is acceptable to the Designated Officers and consistent with the requirements of this Resolution, provided that the amount of Series 2008D Underwriter's discount for the Series 2008D Bonds shall not exceed 0.20% of the par amount thereof. The final maturity of the Series 2008D Bonds shall be no later than June 1, 2024, and the total aggregate principal amount of the Series 2008D Bonds issued shall not exceed \$48,000,000. The takedown fee paid to the Underwriter for the Series 2008D Bonds shall not exceed \$1.00/\$1,000 of the par amount issued. The City Council hereby authorizes the performance by the City of its obligations under the Series 2008D Purchase Contract.

Section 4. Official Statement. The City Council hereby approves the form of Official Statement in the form presented to this meeting, together with such changes or additions thereto as the Designated Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney. Distribution of the Official Statement in connection with the negotiated sale of the Series 2008C/D Bonds is hereby approved. The Designated Officers, each acting alone, are hereby authorized to execute the final form of the Official Statement 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 Official Statement 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 Official Statement by the 2008C Underwriter and the 2008D Underwriter.

Section 5. Approval of Project Lease. The City Council hereby approves the Project Lease in the form on file with the City Clerk, 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 or acceptance 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 and directed to execute the Project Lease, and such other agreements, documents and certificates as may be necessary or desirable to effectuate the purposes of this Resolution and the matters herein authorized, including, without limitation, such other agreements, documents and certificates as may be required by the Project Lease. The City Council hereby authorizes the performance by the City of its obligations under the Project Lease.

Section 6. Approval of Credit Facility and Credit Agreement. The City Council hereby approves the use of the Credit Facility to provide credit and liquidity support for the Series 2008C/D Bonds and authorizes the Designated Officers, each acting alone, to take all actions as they deem necessary to ensure the delivery of the Credit Facility by the Credit Provider in connection with the issuance of the Series 2008C/D Bonds. The City Council hereby approves the Credit Agreement and the Fee Agreement in the forms on file with the City Clerk, 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 and directed to execute the final forms of the Credit Agreement and the Fee Agreement, in the name of and on

behalf of the City. The City hereby authorizes the performance by the City of its obligations under both the Credit Agreement and the Fee Agreement.

Section 7. Official Actions. The Designated Officers and the City Clerk, and any and all other officers of the City 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 order to consummate the lawful issuance and sale of the Series 2008C/D Bonds, the full refunding of the 2001 Bonds, and the consummation of the transactions as described herein, including, without limitation, such documents, assignments, certificates and agreements as may be required by the Indenture, the Project Lease, or any other document initially executed in connection with the issuance and delivery of the Series 2008C/D Bonds or the full refunding of the 2001 Bonds.

ADOPTED this 3rd day of June, 2008, by the following vote:

AYES:	CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO, NGUYEN, OLIVERIO, WILLIAMS; REED.
NOES:	NONE.
ABSENT:	NONE.
DISQUALIFIED:	PYLE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk