

RESOLUTION NO. 74407

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 TAXABLE LEASE REVENUE BONDS, SERIES 2008F (LAND ACQUISITION REFUNDING PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$68,000,000

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, for the purpose of providing funds to assist the City of San José (the “City”) in financing the acquisition of certain real property situated in the City of San José and the City of Santa Clara, County of Santa Clara, State of California, (the “Site”) and the improvements thereon (the “Facilities” and, together with the Site, the “Project”), the Authority issued its City of San José Financing Authority Lease Revenue Bonds, Series 2005A (Taxable) (Land Acquisition Project) in the original aggregate principal amount of \$54,480,000 and its City of San José Financing Authority Lease Revenue Bonds, Series 2005B (AMT) (Land Acquisition Project) in the original aggregate principal amount of \$25,545,000 (collectively, the “2005 Bonds”); and

WHEREAS, the Authority now intends to issue a 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 Taxable Lease Revenue Bonds, Series 2008F (Land Acquisition Refunding Project)” (the “Series 2008F Bonds”) in order to refund the 2005 Bonds; and

WHEREAS, pursuant to a Site and Facility Lease, dated as of June 1, 2008 (the “Site Lease”), the City, as lessor, will lease the Project to the Authority, as lessee, and, in return therefor, the Authority will apply, or caused to be applied, a portion of the proceeds of the Series 2008F Bonds to refund the 2005 Bonds; and

WHEREAS, the Authority will lease the Project back to the City (a) pursuant to an Operating Sublease Agreement, dated as of June 1, 2008, between the Authority, as lessor, and the City, as lessee (the “Operating Sublease Agreement”), for an initial term expiring on May 31, 2014, which term may be extended as provided therein, and (b) after the termination of the Operating Sublease Agreement, pursuant to the General Sublease Agreement, dated as of June 1, 2008, between the Authority, as lessor, and the City, as lessee (the “General Sublease Agreement” and, collectively, with the Operating Sublease Agreement, the “Sublease Agreements”), until the final maturity of the Series 2008F Bonds, and will pay to the Authority

lease payments (the "Lease Payments") as provided in the Sublease Agreements for the use and occupancy of the Project sufficient to pay the principal of and interest and premium, if any, on the Series 2008F 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 2008F Bonds), and certain related expenses; and

WHEREAS, the Series 2008F 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 2008F Bonds and, to that end, the Authority and the City will obtain an irrevocable direct-pay letter of credit (the "Credit Facility") issued by Bank of America, N.A. (the "Credit Provider") to support the payment of debt service on the Series 2008F Bonds and the payment of the purchase price of the Series 2008F 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 and Reimbursement Agreement (the "Credit Agreement") with the Credit Provider; and

WHEREAS, the Series 2008F Bonds will be sold by negotiated sale, and the proposed form of the Purchase Contract (the "Purchase Contract") by and among the Authority, the City and Goldman, Sachs & Co. (the "Underwriter") relating to the purchase of the Series 2008F Bonds by the Underwriter has been presented to the Authority, together with the proposed form of the Official Statement for the Series 2008F Bonds (the "Official Statement") containing information to be used in connection with the marketing of the Series 2008F Bonds by the 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 2008F Bonds constitute "public capital improvements" and that the issuance of the Series 2008F 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 2008F Bonds. The City Council hereby approves the sale of the Series 2008F Bonds by the Authority by negotiation with the Underwriter pursuant to the 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 Purchase Contract for and in the name of and on behalf of the City upon the submission of an offer by the Underwriter to purchase the Series 2008F Bonds, which offer is acceptable to the Designated Officers and consistent with the requirements of this Resolution, provided that the amount of Underwriter's discount for the Series 2008F Bonds shall not exceed 0.23% of the par amount thereof. The final maturity of the Series 2008F Bonds shall be no later than June 1, 2034, and the total aggregate principal amount of the Series 2008F Bonds issued shall not exceed \$68,000,000. The takedown fee paid to the Underwriter for the Series 2008F Bonds will 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 Purchase Contract.

Section 3. 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 2008F 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 Underwriter.

Section 4. Approval of Site Lease and Sublease Agreements. The City Council hereby approves the Site Lease and the Sublease Agreements in the forms 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 Site Lease and the Sublease Agreements, 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 Site Lease and the Sublease Agreements. The City Council hereby authorizes the performance by the City of its obligations under the Site Lease and the Sublease Agreements.

Section 5. 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 2008F 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 2008F Bonds. The City Council hereby approves the Credit Agreement in the form 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 form of the Credit Agreement, in the name of and on behalf of the City. The City hereby authorizes the performance by the City of its obligations under the Credit Agreement.

Section 6. 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 2008F Bonds, the full refunding of the 2005 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 Site Lease, the Sublease Agreements, or any other document initially executed in connection with the issuance and delivery of the Series 2008F Bonds or the full refunding of the 2005 Bonds.

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

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

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk