

RESOLUTION NO. 74512

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ AMENDING AND RESTATING RESOLUTION NO. 74400 TO APPROVE , AUTHORIZE AND DIRECT EXECUTION OF CERTAIN FINANCING DOCUMENTS AND DIRECTING CERTAIN RELATED ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE CITY OF SAN JOSÉ FINANCING AUTHORITY LEASE REVENUE BONDS, SERIES 2008A (CIVIC CENTER REFUNDING PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$70,000,000

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 assisted the City in connection with the City’s acquisition and construction of a new city hall for the City, including an on-site parking facility (the “Facilities” and, together with the hereinafter mentioned Site, the “Project”), by issuing three series of bonds 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 (the “Act”), and an Indenture of Trust dated as of November 1, 2002 (the “Original Indenture”) between the Authority and Wells Fargo Bank, National Association, as trustee (the “Trustee”), as follows: (i) \$292,425,000 City of San José Financing Authority Lease Revenue Bonds, Series 2002B (Civic Center Project) (the “Series 2002B Bonds”); \$60,000,000 City of San José Financing Authority Lease Revenue Bonds, Series 2002C (Civic Center Project) (the “Series 2002C Bonds”); and (iii) \$60,000,000 City of San José Financing Authority Lease Revenue Bonds, Series 2002D (Civic Center Project) (the “Series 2002D Bonds” and, together with the Series 2002B Bonds and the Series 2002C Bonds, the “Series 2002 Bonds”); and

WHEREAS, in connection with the issuance of the Series 2002 Bonds, the City and the Authority entered into a Site Lease dated as of November 1, 2002 (the “Site Lease”), pursuant to which the City, as lessor, leased the land on which the Facilities are now constructed (the “Site”), to the Authority, as lessee, and, in return therefor, the Authority applied a portion of the proceeds of the Series 2002 Bonds to the acquisition and construction of the Facilities; and

WHEREAS, pursuant to the Project Lease dated as of November 1, 2002 (the “Original Project Lease”), the Authority leased back the Project to the City, and the City, pursuant to the Original Project Lease, is obligated to pay to the Authority lease payments (the “Lease Payments”) for the use and occupancy of the Project in an amount sufficient to pay the principal of and interest and premium, if any, on the Series 2002 Bonds and any Additional Bonds (as defined in the Original Indenture) issued pursuant to and in accordance with the Original Indenture, and certain related expenses; and

WHEREAS, the Authority has heretofore issued as Additional Bonds its Lease Revenue Refunding Bonds, Series 2006A (Civic Center Project) in the amount of \$57,440,000 (the "Series 2006A Bonds") pursuant to a First Supplemental Indenture of Trust dated as of May 1, 2006 (the "First Supplemental Indenture") between the Authority and the Trustee in order to refund, in full, the Series 2002D Bonds; and

WHEREAS, in connection with the issuance of the Series 2006A Bonds, the Authority and the City entered into a First Amendment to Project Lease dated as of May 1, 2006 (the "First Amendment") between the Authority, as lessor, and the City, as lessee; and

WHEREAS, the Authority and the City now desire that the Authority issue another series of Additional Bonds designated as the "City of San José Financing Authority Lease Revenue Bonds, Series 2008A (Civic Center Refunding Project)" (the "Series 2008A Bonds") in order to refund all of the Series 2002C Bonds, and to that end, there has been prepared a Second Supplemental Indenture of Trust between the Authority and the Trustee (the "Second Supplemental Indenture" and, together with the Original Indenture and the First Supplemental Indenture, the "Indenture") providing for the issuance the Series 2008A Bonds, and a Second Amendment to Project Lease between the Authority and the City (the "Second Amendment" and, together with the Original Project Lease and the First Amendment, the "Project Lease") as required by Section 3.05(f) of the Original Indenture; and

WHEREAS, in order to provide additional security for the Series 2008A Bonds, (i) the City, as lessor, and the Authority, as lessee, will enter into a Property Lease (the "Property Lease") pursuant to which the City will lease the real property and the improvements constructed thereon identified therein (the "Leased Property") to the Authority, (ii) the Authority, as lessor, and the City, as lessee, will enter into a Lease Agreement (the "Lease Agreement") pursuant to which the Authority will lease the Leased Property back to the City, (iii) pursuant to the Lease Agreement, the City will make certain lease payments (the "Supplemental Lease Payments") to the Authority under the conditions specified in the Lease Agreement, and (iv) pursuant to the Second Supplemental Indenture, the Authority will assign its right to receive Supplemental Lease Payments to the Trustee for the benefit of the owners of the Series 2008A Bonds and the Credit Provider (as defined below); and

WHEREAS, the Series 2008A 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 2008A Bonds and, to that end, the Authority and the City will obtain an irrevocable direct-pay letter of credit (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 2008A Bonds, and the payment of the purchase price of the Series 2008A Bonds upon their optional or mandatory tender, as provided in the Credit Facility and the Second Supplemental Indenture; 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") and an agreement related to the payment of fees in connection with the Credit Facility (the "Fee Agreement") with the Credit Provider; and

WHEREAS, the Series 2008A 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 2008A Bonds by the Underwriter has been presented to the Authority, together with the proposed form of the Official Statement for the Series 2008A Bonds (the "Official Statement") containing information to be used in connection with the marketing of the Series 2008A Bonds by the Underwriter; and

WHEREAS, the City Council duly considered such transactions at its meeting of June 3, 2008 and adopted Resolution No. 74400 (the "Original Resolution") approving various financing documents and authorizing and directing the execution of such documents in connection with the Authority's issuance of the Series 2008A Bonds in an aggregate principal amount not to exceed \$61,000,000; and

WHEREAS, the City Council wishes to amend and restate the Original Resolution in order to approve the various financing documents and to authorize and direct the execution of such documents in connection with the Authority's issuance of the Series 2008A Bonds in an aggregate principal amount not to exceed \$70,000,000 and to authorize and direct other actions related to the issuance of the Series 2008A Bonds, including the substitution of the Underwriter in the event such substitution becomes necessary and 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 2008A Bonds constitute "public capital improvements" and that the issuance of the Series 2008A 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 2008A Bonds. The City Council hereby approves the sale of the Series 2008A 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 2008A 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 2008A Bonds shall not exceed 0.19% of the par amount thereof. The final maturity of the Series 2008A Bonds shall be no later than June 1, 2039, and the total aggregate principal amount of the Series 2008A Bonds issued shall not exceed \$70,000,000. The takedown fee paid to the Underwriter for the Series 2008A 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 Purchase Contract. Additionally, the Designated Officers, without further action of the City Council, each are

authorized to enter into a purchase contract for the negotiated sale of the Series 2008A Bonds with an investment banking firm other than the Underwriter in substantially the form approved hereby, and on the terms described in this Section (the "Substitute Purchase Contract"), if the Designated Officers deem it is in the best interest of the City to do so. The City Council hereby authorizes the performance by the City of its obligations under the Purchase Contract or the Substitute Purchase Contract, as applicable.

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 2008A 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 Second Amendment. The City Council hereby approves the form of the Second Amendment 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 Second Amendment, 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 Second Amendment. The City Council hereby authorizes the performance by the City of its obligations under the Second Amendment.

Section 5. Approval of Property Lease and Lease Agreement. The City Council hereby authorizes the Designated Officers, in consultation with the City Attorney, to enter into the Property Lease and the Lease Agreement, as presented in concept to the Board at its meeting of June 3, 2008, together with such additions thereto and changes thereto as the Designated Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney. The execution of the final form of both the Property Lease and the Lease Agreement 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 both the Property Lease and the Lease Agreement, 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 Property Lease and Lease Agreement. The City Council hereby authorizes the Designated Officers to select the Leased Property to be subject to the Property Lease and the Lease Agreement. The City Council hereby authorizes the performance by the City of its obligations under the Property Lease and the Lease Agreement.

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 2008A 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 2008A 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 Council 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 2008A Bonds, the full refunding of the Series 2002C 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, the Property Lease, the Lease Agreement or any other document initially executed in connection with the issuance and delivery of the Series 2008A Bonds or the full refunding of the Series 2002C Bonds.

ADOPTED this 24th day of June, 2008, by the following vote:

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

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk