

RESOLUTION NO. 74632

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING CERTAIN AMENDMENTS TO FINANCING DOCUMENTS RELATED TO THE CITY OF SAN JOSE FINANCING AUTHORITY'S LEASE REVENUE COMMERCIAL PAPER NOTES PROGRAM AND 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 the acquisition, construction and improvement of certain public capital improvements; and

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

WHEREAS, on January 28, 2004, pursuant to a Trust Agreement dated as of January 1, 2004 (the "Original Trust Agreement"), between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Act"), the Authority delivered its first issue of its not to exceed \$98,000,000 Tax-Exempt Lease Revenue Commercial Paper Notes (the "Tax-Exempt Commercial Paper Notes"); and

WHEREAS, concurrently with the delivery of the first issue of the Tax-Exempt Commercial Paper Notes, the Authority and the City entered into a Site Lease, dated as of January 1, 2004 (the "Site Lease"), pursuant to which the Authority leased from the City certain Property (as such term is defined therein) located in the City, including the buildings and improvements thereon owned by the City; and

WHEREAS, concurrently with the delivery of the first issue of the Tax-Exempt Commercial Paper Notes, the Authority and the City also entered into a Sublease, dated as of January 1, 2004 (the "Sublease"), pursuant to which the City subleased the Property from the Authority; and

WHEREAS, the payment of principal of and interest on the Commercial Paper Notes (as defined below) are secured by an irrevocable direct pay letter of credit (the "Credit Facility") issued severally, but not jointly, by State Street Bank and Trust Company and the California State Teachers' Retirement System (collectively, the "Banks") pursuant to the terms of a reimbursement agreement among the Authority, the City, the Banks and State Street Bank and Trust Company, as agent for the Banks dated as of January 1, 2004 (the "Original Reimbursement Agreement") as subsequently amended as described below; and

WHEREAS, on November 9, 2004, the Authority and the City adopted resolutions, after a duly held public hearing, approving using proceeds of the Commercial Paper Notes to finance the installation and integration of computer software, software licensing, hardware and certain related costs related to the City's billing system previously referred to as the "Integrated Utility

Billing, Customer Service and Performance Management System” (the “CUSP Project”) and currently known as the “Utility Billing System Project”); and

WHEREAS, the City, in order to increase its flexibility, requested that pursuant to the Act, the Authority issue its City of San José Financing Authority Taxable Lease Revenue Commercial Paper Notes (the “Taxable Commercial Paper Notes”); and

WHEREAS, in order to aid the City, the Authority determined to amend and restate the Original Trust Agreement and to amend certain related documents in order to provide for the issuance of its Taxable Commercial Paper Notes as well as its Tax-Exempt Commercial Paper Notes (collectively, the “Commercial Paper Notes”); and

WHEREAS, on June 23, 2005, the Authority and the Trustee entered into an Amended and Restated Trust Agreement (the “Amended and Restated Trust Agreement”) in order to provide for the issuance of Taxable Commercial Paper Notes; and

WHEREAS, on November 17, 2005, the Authority and the Trustee entered into a First Supplement to Amended and Restated Trust Agreement (the “First Supplement”) in order to increase the not-to-exceed maximum aggregate principal amount of Commercial Paper Notes from \$98,000,000 to \$116,000,000, and also to allow the additional use of the Commercial Paper Notes to finance the City’s Central Service Yard Phase II Project and the demolition and clean up at the City’s Main Service Yard; and

WHEREAS, on May 22, 2007, the Authority and the City adopted resolutions, after a duly held public hearing, approving using proceeds of Taxable Commercial Paper Notes to pay for the cost of improvements to the City-owned HP Pavilion and related costs; and

WHEREAS, it is now desirable to expand the Authority’s ability to issue Commercial Paper Notes for the purpose of refunding bonds and other obligations of the City or the Authority pursuant to Government Code Sections 53570 et seq and 53580 et seq, and, to that end, there has been prepared a Second Supplement to the Amended and Restated Trust Agreement (the “Second Supplement”); and

WHEREAS, the City 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 THAT:

Section 1. The City Council hereby approves the Authority’s and the Trustee’s execution and delivery of the Second Supplement to the Amended and Restated Trust Agreement, as amended by the First Supplement in order to expand the Authority’s ability to issue Commercial Paper Notes for the purpose of refunding bonds and other obligations of the City or the Authority pursuant to either the provisions of the Act or the provisions of Government Code Sections 53570 et seq and 53580 et seq. The City Council hereby approves the payment of the costs related to the execution and delivery of the Second Supplement and the other documents referenced in Sections 2 and 3 below.

Section 2. The City Council hereby authorizes the City Manager or the City Manager’s authorized designees (the “Designated Officers”), each acting alone, and upon consultation with the City Attorney to execute Amendment No. 2 to the Letter of Credit and Reimbursement Agreement by and among the Authority, the City, the Banks and State Street Bank and Trust Company, as agent for the Banks (“Amendment No. 2” and together with the Original Reimbursement Agreement, as amended by Amendment No. 1 to the Original Reimbursement Agreement, the “Reimbursement Agreement”) if such an amendment is deemed necessary or desirable in order to conform the terms of the Reimbursement Agreement with the Trust Agreement.

The City Council hereby affirms its previous delegation of authority to the Designated Officers, each acting alone, to execute and deliver one or more extensions to the Credit Facility or the commitment available under the Reimbursement Agreement for any duration of time that they deem necessary, advisable or prudent, provided that no such extension shall require an annual fee in excess of .75% of the commitment available under the Reimbursement Agreement without the approval of this City Council.

Section 3. The City Manager, the City Clerk, and any and all other officers of the City are hereby authorized, 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 Commercial Paper Notes and the consummation of the transactions as described herein, including without limitation, such documents, assignments, certificates and agreements as may be required by the Trust Agreement, the Reimbursement Agreement, the Dealer Agreement or the Issuing and Paying Agent Agreement, the Sublease or the Site Lease (as such terms are defined in the Trust Agreement). Further, the Designated Officers, each acting alone, are each hereby authorized to execute a certificate as to arbitrage and other necessary certificates or forms to ensure the continued tax-exempt status of the Tax-Exempt Commercial Paper Notes.

Any authority delegated under this Resolution to a specified official of the City may also be exercised by the specified official's authorized designee.

ADOPTED this 21st day of October, 2008, by the following vote:

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

CHUCK REED
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk

