

RESOLUTION NO. 74894

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ AUTHORIZING THE DIRECTOR OF FINANCE TO NEGOTIATE AND EXECUTE A SIXTH SUPPLEMENTAL TRUST AGREEMENT TO THE MASTER TRUST AGREEMENT WITH THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. RELATED TO CITY OF SAN JOSÉ AIRPORT REVENUE BONDS SERIES 2004A, SERIES 2004B, SERIES 2004C, SERIES 2004D, SERIES 2007A AND SERIES 2007B

WHEREAS, on June 24, 2004, the City of San José (“City”) issued its Airport Revenue Bonds, Series 2004A, Series 2004B, Series 2004C and Series 2004D (collectively, the “2004 Bonds”) for the purpose of financing a portion of the improvement projects at the Norman Y. Mineta San José International Airport (“Airport”); and

WHEREAS, subsequent to the issuance of the 2004 Bonds, the City issued its Airport Revenue Bonds, Series 2007A and Series 2007B (collectively, the “2007 Bonds”), to provide funding for Phase 1 of the Airport Development Program, including funding for the completion of the North Concourse Project; and

WHEREAS, the 2004 Bonds and the 2007 Bonds were issued pursuant to a Master Trust Agreement with The Bank of New York Mellon Trust Company, N.A. (the “Bank”) dated as of July 1, 2001, and amended and supplemented to date; and

WHEREAS, the Master Trust Agreement contains provisions allowing the City to invest in permitted investments, which includes investment agreements that meet the requirements defined in the Master Trust Agreement; and

WHEREAS, per the Master Trust Agreement, an investment agreement is defined to include a collateralized investment agreement that is provided by a registered broker/dealer subject to Securities Investor Protection Corporation (“SIPC”) rated A1 or better by Moody’s and A+ or better by Standard & Poor’s; and

WHEREAS, in conjunction with the 2007 Bonds issuance, the City directed Bank to enter into two collateralized investment agreements for the investment of proceeds of the 2004 Bonds and the 2007 Bonds (the “Agreements”) with Citigroup Global Markets, Inc. (“CGMI”); and

WHEREAS, on the date the Bank entered into the Agreements with CGMI as directed by the City, the Agreements met the rating requirements specified in the Master Trust Agreement, however, subsequently, CGMI’s ratings have been downgraded; and

WHEREAS, due to the ratings downgrade, the Agreements no longer meet the criteria set forth under the definition of permitted investments as defined in the Master Trust Agreement; and

WHEREAS, it is to the City’s benefit to amend the Master Trust Agreement to include the Agreements as permitted investments by amending the definition of “investment agreement” to explicitly allow the Agreements to remain in effect for the term of the Agreements;and

WHEREAS, the proposed amendment does not apply to any future investment agreement related to the City’s Airport Revenue Bonds; and

WHEREAS, given that all of the City’s outstanding Airport Revenue Bonds are insured by municipal bond insurers, the provisions of the Master Trust Agreement permit such an amendment subject to the consent of all of the bond insurers insuring the City’s outstanding Airport Revenue Bonds; and

WHEREAS, the City has obtained or anticipates obtaining the consent of all of such bond insurers to the proposed amendment; and

WHEREAS, the Master Trust Agreement specifies other requirements that are conditions to the amendment of the Master Trust Agreement, as outlined in the memorandum to this Council, dated April 13, 2009; and

WHEREAS, the City has met or anticipates meeting all such conditions to the proposed amendment; and

WHEREAS, the City desires to negotiate and execute a sixth supplemental trust agreement to the Master Trust Agreement with the Bank related to City's Airport Revenue Bonds to permit the continuance of two collateralized investment agreements with CGMI;

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

1. Subject to the terms and conditions specified in the Master Trust Agreement related to the amendment of the Master Trust Agreement, the Director of Finance is hereby authorized to negotiate and execute a sixth supplemental trust agreement to the Master Trust Agreement (the "Sixth Supplemental Agreement") with the Bank to permit the continuance of two collateralized investment agreements with CGMI related to the City of San José Airport Revenue Bonds, Series 2004A, Series 2004B, Series 2004C, Series 2004D, Series 2007A and Series 2007B.

2. The City Manager, the Director of Finance, 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 proposed to be delivered in connection with the execution and delivery of the Sixth Supplemental Agreement, as are deemed to be necessary and desirable to accomplish the transactions contemplated herein. Authorization granted to the City officials 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.

ADOPTED this 5th day of May, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CHIRCO.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk