

RESOLUTION NO. 75387

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF AMENDMENTS TO THE LETTER OF CREDIT AND REIMBURSEMENT AGREEMENTS RELATED TO THE CITY OF SAN JOSE FINANCING AUTHORITY LEASE REVENUE BONDS, SERIES 2008A, SERIES 2008B, SERIES 2008C, SERIES 2008D AND SERIES 2008E (VARIOUS PROJECTS) IN ORDER TO EXTEND THE TERMS OF SUCH AGREEMENTS AND TO AUTHORIZE 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 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 variable rate bonds (collectively, the "Bonds"):

- City of San José Financing Authority Lease Revenue Bonds, Series 2008A (Civic Center Refunding Project), initially issued in the amount of \$60,310,000 (the "Series 2008A Bonds") pursuant to an Indenture of Trust, dated as of November 1, 2002, between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"), as supplemented and amended by a First Supplemental Indenture dated as of May 1, 2006, between the Authority and the Trustee, and as supplemented and amended by a Second Supplemental Indenture dated as of August 1, 2008, between the Authority and the Trustee (collectively, the "Series 2008A Indenture");
- City of San José Financing Authority Lease Revenue Bonds, Series 2008B (Civic Center Garage Refunding Project), initially issued in the amount of \$36,580,000 (the "Series 2008B Bonds") pursuant to an Indenture of Trust, dated as of July 1, 2008, between the Authority and Wells Fargo Bank, National Association, as trustee (the "Series 2008B Indenture");
- City of San José Financing Authority Lease Revenue Bonds, Series 2008C (Hayes Mansion Refunding Project) initially issued in the amount of \$10,915,000 (the "Series 2008C Bonds") and City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008D (Hayes Mansion Refunding Project) initially issued in the amount of \$47,390,000 pursuant to an Indenture of Trust, dated as of June 1, 2008,

between the Authority and Wells Fargo Bank, National Association, as trustee (the "Series 2008C/D Indenture");

- City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E (Ice Centre Refunding Project), initially issued in the amount of \$28,070,000 (the "Series 2008E Bonds") pursuant to an Indenture of Trust, dated as of July 1, 2008, between the Authority and Wells Fargo Bank, National Association, as trustee (the "Series 2008E Indenture"); and

WHEREAS, in connection with the issuance of the Series 2008A Bonds, the Authority, the City and The Bank of Nova Scotia, acting through its New York Agency, and the California State Teachers' Retirement System (collectively, the "Series 2008A Credit Provider") entered into a Letter of Credit Reimbursement Agreement, dated as of August 1, 2008 (the "Series 2008A Credit Agreement") pursuant to which the Series 2008A Credit Provider issued an irrevocable direct-pay letter of credit (the "Series 2008A Credit Facility") 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; and

WHEREAS, in connection with the issuance of the Series 2008B Bonds, the Authority, the City and Bank of America, N.A., and the California State Teachers' Retirement System (collectively, the "Series 2008B Credit Provider") entered into a Letter of Credit Reimbursement Agreement, dated as of July 1, 2008 (the "Series 2008B Credit Agreement"), pursuant to which the Series 2008B Credit Provider issued an irrevocable direct-pay letter of credit (the "Series 2008B Credit Facility") to support the payment of debt service on the Series 2008B Bonds and the payment of the purchase price of the Series 2008B Bonds upon their optional or mandatory tender; and

WHEREAS, in connection with the issuance of the Series 2008C Bonds and the Series 2008D Bonds, the Authority, the City and The Bank of Nova Scotia, acting through its New York Agency, and the California State Teachers' Retirement System (collectively, the "Series 2008C/D Credit Provider") entered into a Letter of Credit Reimbursement Agreement, dated as of June 1, 2008 (the "Series 2008C/D Credit Agreement"), pursuant to which the Series 2008C/D Credit Provider issued irrevocable direct-pay letters of credit (the "Series 2008C Credit Facility and the Series 2008D Credit Facility") to support the payment of debt service on the Series 2008C Bonds and the Series 2008D Bonds and the payment of the purchase price of the Series 2008C Bonds and the Series 2008D Bonds upon their optional or mandatory tender; and

WHEREAS, in connection with the issuance of the Series 2008E Bonds, the Authority, the City and Bank of America, N.A., and the California State Teachers' Retirement System (collectively, the "Series 2008E Credit Provider") entered into a Letter of Credit Reimbursement Agreement, dated as of July 1, 2008 (the "Series 2008E Credit Agreement"), pursuant to which the Series 2008E Credit Provider issued an irrevocable direct-pay letter of credit (the "Series 2008E Credit Facility") to support the payment of debt service on the Series 2008E Bonds and the payment of the purchase price of the Series 2008E Bonds upon their optional or mandatory tender; and

WHEREAS, in connection with the issuance and delivery of each of the Credit Facilities, the Authority, the City and the applicable Credit Provider entered into an agreement related to

the payment of fees in connection with each Credit Facility (the "Fee Agreement" and collectively, the "Fee Agreements"); and

WHEREAS, the Series 2008A Credit Facility expires on August 14, 2010, the Series 2008B Credit Facility expires on July 9, 2010, the Series 2008C Credit Facility and the Series 2008D Credit Facility expire on June 25, 2010, and the Series 2008E Credit Facility expires on July 2, 2010; and

WHEREAS, the Authority and the City desire to continue negotiations with the Series 2008A Credit Provider, the Series 2008B Credit Provider, the Series 2008C/D Credit Provider and the Series 2008E Credit Provider (collectively, the "Credit Providers" and each a "Credit Provider") in order to extend the expiration dates of the Series 2008A Credit Facility, the Series 2008B Credit Facility, the Series 2008C Credit Facility, the Series 2008D Credit Facility and the Series 2008E Credit Facility (collectively, the "Credit Facilities" and each a "Credit Facility"); and

WHEREAS, in connection with such negotiations and the extension of the maturity dates of the Credit Facilities, the Authority and the City may be required by the Credit Providers to execute amendments (collectively, the "Amendments" and each an "Amendment") to the Series 2008A Credit Agreement, the Series 2008B Credit Agreement, the Series 2008C/D Credit Agreement, the Series 2008E Credit Agreement (collectively, the "Credit Agreements" and each a "Credit Agreement"); and

WHEREAS, in connection with such negotiations, the Authority and the City may be required by the Credit Providers to execute amendments to the Fee Agreements (collectively, the "Fee Agreement Amendments" and each a "Fee Agreement Amendment"); and

WHEREAS, the City Council has duly considered the need for the City and the Authority to obtain extensions to the expiration dates of the Credit Facilities and wishes at this time to authorize the City to continue negotiations with the Credit Providers and to enter into the Credit Agreement Amendments and the Fee Agreement Amendments, all in the public interests of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

Section 1. Findings. The City Council hereby finds and determines that it is necessary and advisable for the City and the Authority to extend the expiration dates of the Credit Facilities and, if required to accomplish such extensions, to enter into one or more Credit Agreement Amendments and Fee Agreement Amendments.

Section 2. Authorization Related to Negotiation, Execution and Delivery. The City Council hereby authorizes the City Manager of the City (the "City Manager"), the Assistant Director of Finance of the City or the authorized designees of the City Manager (each, a "Designated Officer") to negotiate, execute and deliver one or more Credit Agreement Amendments and one or more Fee Agreement Amendments with respect to each of the Credit Facilities, provided that the maximum fee payable with respect to any of the Credit Facilities shall not exceed 2.05% per annum for a series of bonds with a rating of A-/A3/A- by Fitch/Moody's/Standard & Poor's and that the terms and conditions of the Credit Agreement Amendments and Fee Agreement Amendments otherwise are consistent with the terms and

conditions described in the memorandum to the Board and City Council, dated May 13, 2010 related to the extension of the Credit Facilities.

Section 3. Official Actions. The Designated Officers, 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 execution and delivery of the Credit Agreement Amendments, the Fee Agreement Amendments and the extension of the Credit Facilities.

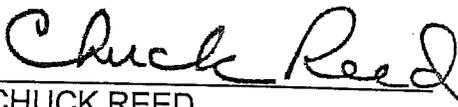
ADOPTED this 25th day of May, 2010, by the following vote:

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

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: PYLE.


CHUCK REED
Mayor

ATTEST: 

LEE PRICE, MMC
City Clerk