

RESOLUTION NO. 74827**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ, DEEMING IT NECESSARY TO INCUR BONDED INDEBTEDNESS TO FINANCE SPECIFIED ACQUISITION, CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, REHABILITATION AND UPGRADES OF THE SAN JOSÉ CONVENTION CENTER BY AUTHORITY OF CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1, CITY OF SAN JOSÉ, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA**

WHEREAS, the City of San José (the "City") is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and to enforce all laws and regulations with respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter of the City; and

WHEREAS, the City Council of the City duly adopted its Resolution No. 74783 (the "Resolution of Intention") on February 3, 2009, wherein the City Council declared its intention to and proposed to establish a Convention Center Facilities District under and pursuant to Chapter 14.32 of the San José City Municipal Code (the "Chapter"), to be known and designated as "Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California" (the "Convention Center Facilities District"), and to levy a special tax therein to finance the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center (the "Facilities"); and

WHEREAS, The City Council also adopted its Resolution No. 74784 (the "Resolution to Incur Bonded Indebtedness") on February 3, 2009, declaring its intention to incur a bonded indebtedness in the principal amount of not to exceed \$750,000,000 over the life of the Convention Center Facilities District to finance the Facilities; and

WHEREAS, the Resolution to Incur Bonded Indebtedness fixed a time and place for a public protest hearing (the "Public Hearing") to be held by the City Council to consider incurring the proposed debt and to consider any other matters set forth in the Resolution to Incur Bonded Indebtedness; and

WHEREAS, pursuant to the Resolution to Incur Bonded Indebtedness, the Public Hearing was set by the City Council for Tuesday, the 10th day of March, 2009, at the hour of 1:30 P.M., in the City Council Chambers in the San José City Hall at 200 East Santa Clara Street, Council Wing, 2nd Floor, San José, California, 95113; and

WHEREAS, on March 10, 2009, at or shortly after the time set for the Public Hearing, the City Council opened the Public Hearing to consider the amount and

the terms of the bonds proposed to be authorized by the Convention Center Facilities District, and all other matters set forth in the Resolution to Incur Bonded Indebtedness; and all persons interested, including all taxpayers, property owners and registered voters within the Convention Center Facilities District, were given an opportunity to appear and to be heard on, and they were permitted to present any matters relating to, the necessity for incurring the bonded indebtedness to finance the costs of the acquisition and construction of the Facilities; and the testimony of all interested persons and all taxpayers, property owners and registered voters for or against the authorization to issue bonds to be conferred upon the City Council by the Convention Center Facilities District or any other matters set forth in the Resolution to Incur Bonded Indebtedness, was heard and considered; and

WHEREAS, all registered voters residing within the boundaries of the proposed Convention Center Facilities District, and all owners of land within the proposed Convention Center Facilities District (and the operators of hotels that are located on land leased from public agencies) that would not be exempt from the proposed levy of special tax, were allowed to submit written protests against incurring the proposed bonded indebtedness and any aspect of the proposals contained in the Resolution to Incur Bonded Indebtedness, and were permitted to withdraw their protests prior to the close of the Public Hearing; and

WHEREAS, the City Council has adopted on this date its Resolution No. _____ establishing the Convention Center Facilities District (the "Resolution of Formation") which sets forth the special tax to be authorized within the Convention Center Facilities District and the Facilities that may be financed with the proceeds of the special tax collections; and

WHEREAS, there are on file with the City Clerk a proof of publication of the Notice of Public Hearing in the *SAN JOSÉ MERCURY NEWS*, and a Certificate of Mailing of Notice of Public Hearing showing mailed notice to each owner of land within the Convention Center Facilities District except in cases where the land is owned by a public agency in which case the mailing was to the lessee of the public agency; and

WHEREAS, the City Council is fully advised in this matter;

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

1. The City hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to public affairs of the City and that the statements, findings and determinations of the City set forth above are true and correct and that the consideration of the issuance of bonds authorized by the Convention Center Facilities District is important to the public welfare of the residents of the City, and may result in significant public benefits.

2. The City Council accepts the proof of publication of the Notice of Public Hearing and the Certificate of Mailing the Notice of Public Hearing, and finds,

based thereon, that proper notice of the Public Hearing has been given in accordance with the Chapter and the California Government Code, and that the Public Hearing was conducted with proper and legal notice in all respects.

3. The City Council finds and determines that at the close of the Public Hearing, written protests, if any, against incurring the proposed bonded indebtedness and any aspect of the proposals contained in the Resolution to Incur Bonded Indebtedness, were submitted by less than 50 percent of the registered voters residing within the Convention Center Facilities District. Similarly, the City Council finds that at the close of the Public Hearing, such written protests, if any, were submitted by the owners of less than one-half of the Hotel rooms (Section 14.32.420, San José Municipal Code) in the territory proposed to be included in the Convention Center Facilities District and not exempt from the Special Tax. Thus, the City Council finds that it is not precluded, by the Chapter, from proceeding further in this matter. The City Council hereby further orders and determines that all protests, if any, against incurring the proposed bonded indebtedness and any aspect of the proposals contained in the Resolution to Incur Bonded Indebtedness, that may have been submitted, have been considered and are hereby overruled.

4. The City Council hereby declares that the public convenience and necessity require, and it is necessary, that a bonded indebtedness be incurred to finance the acquisition and construction of the Facilities. The authorization to finance the acquisition and construction of the Facilities includes the issuance of debt (as that term is defined in the Chapter, "Debt"), incidental expenses for the Facilities comprising the costs of planning and designing the Facilities, together with the costs of environmental evaluations thereof, and all costs associated with the creation of the Convention Center Facilities District, the issuance of Debt, the determination of the amount of any special taxes or the collection of any special taxes and costs otherwise incurred in order to carry out the authorized purposes of the Convention Center Facilities District, together with any other expenses incidental to the acquisition and construction of the Facilities. A representative list of incidental expenses proposed to be incurred are further described in Exhibit C to the Resolution of Intention.

5. The amount of the proposed Debt to be incurred over the life of the Convention Center Facilities District to finance the acquisition and construction of the Facilities shall not exceed \$750,000,000, which amount includes all costs and estimated costs incidental to, or connected with, the accomplishment of the purpose for which the Debt is proposed to be incurred, including but not limited to the estimated costs of acquisition of interests in real property; capacity or connection fees; satisfaction of contractual obligations relating to expenses or the advancement of funds for expenses existing at the time the Debt is issued pursuant to the Chapter; architectural, engineering, inspection, legal, fiscal, and financial consultant fees; bond and other reserve funds; discount fees; interest on any Debt authorized by the Convention Center Facilities District estimated to be due and payable within two years of issuance of the Debt; election costs; and all costs of issuance of the Debt, including but not limited to fees for the financial advisor, disclosure counsel, absorption consultant, appraiser, fiscal agent, special tax consultant, bond or special counsel, costs of obtaining credit ratings,

bond insurance premiums, fees for letters of credit and other credit-enhancement costs, and printing costs.

6. The maximum term of any Debt shall not exceed forty (40) years from the date of its issuance.

7. The maximum annual rate or rates of interest to be paid on any Debt shall not exceed twelve percent (12%) per annum, payable at least annually the first year and semiannually thereafter.

8. It is the intention of the City Council that any Debt issued be callable (may be redeemed prior to its maturity date) in accordance with the Chapter.

9. Under the Chapter and pursuant to Section 53353.5 of the Act (as defined in the Chapter), the authority to levy the special tax to finance the Facilities, the question of setting the appropriations limit for the Convention Center Facilities District, and the question whether the Convention Center Facilities District will authorize the issuance of the Debt described above shall be combined into a single ballot question and submitted to the qualified electors of the Convention Center Facilities District at a special mailed-ballot election, with ballots to be delivered to the City Clerk no later than 8:00 o'clock p.m. on Monday, June 8, 2009. However, if prior to that time the Clerk receives all of the eligible ballots to be cast, then pursuant to Section 53351(j) of the Act the Clerk will at that time immediately declare the election closed.

10. The election shall be conducted in accordance with the City Council's Resolution Calling Special Mailed-Ballot Election, to be adopted this date, to which reference is made for further particulars.

11. If the ballot proposition receives the approval of two-thirds (2/3) or more of the votes cast within the Convention Center Facilities District, the Debt may be issued and sold for the purposes for which it was authorized, and the Debt (except where special funds are otherwise available) shall be paid exclusively from the annual levy of the special tax and in any and all cases is not and shall not be secured by any other taxing power or funds of the City.

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12. This Resolution shall take effect upon its adoption.

ADOPTED this 10th day of March 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