

**FOURTH AMENDMENT  
TO  
AMENDED AND RESTATED INDENTURE OF TRUST**

**Dated as of June 1, 2020**

**By and Between the**

**CITY OF SAN JOSE FINANCING AUTHORITY**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Trustee**

**Relating to**

**\$28,070,000  
Initial Principal Amount  
City of San José Financing Authority  
Taxable Lease Revenue Bonds,  
Series 2008E-1 and Series 2008E-2  
(Ice Centre Refunding Project)**

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## FOURTH AMENDMENT TO AMENDED AND RESTATED INDENTURE OF TRUST

THIS FOURTH AMENDMENT TO AMENDED AND RESTATED INDENTURE OF TRUST, dated as of June 1, 2020 (the "Fourth Amendment"), is by and between the CITY OF SAN JOSE FINANCING AUTHORITY (the "Authority"), a public body, corporate and politic, duly organized and existing under the laws of the State of California, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

### WITNESSETH:

**WHEREAS**, the Authority is a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement, dated December 8, 1992, by and between the City of San José (the "City") and the Redevelopment Agency of the City of San José (the "Former Agency"), and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), and is authorized pursuant to Article 4 of the Act (the "Bond Law") to borrow money for the purpose, among other things, of financing and refinancing public capital improvements for the City and the Former Agency;

**WHEREAS**, the Former Agency, as of February 1, 2012, has been dissolved and the City has become the successor agency of the Former Agency pursuant to Part 1.85 of Division 24 of the California Health and Safety Code and per California Health and Safety Code Section 34178(b)(3), the joint exercise of powers agreement establishing the Authority remains in effect; 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");

**WHEREAS**, on July 3, 2008, pursuant to the Act and an Indenture of Trust dated as of June 1, 2008, and supplemented on October 1, 2010 (as so supplemented, the "Original Indenture"), between the Authority and the Trustee, the Authority issued its \$28,070,000 initial principal amount of "City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E (Ice Centre Refunding Project)" (the "Bonds") in order to refinance the City's acquisition and construction of an ice skating facility center, consisting of four ice skating rinks and related facilities;

**WHEREAS**, pursuant to a Site and Facility Lease, dated as of July 1, 2008 (the "Site Lease"), the City, as lessor, leased the Project (as defined in the Original Indenture) to the Authority, as lessee, and, pursuant to a Project Lease, dated as of July 1, 2008 (as heretofore amended, the "Project Lease"), the Authority agreed to lease back the Project to the City, and the City, pursuant to the Project Lease, agreed to pay to the Authority lease payments (the "Lease Payments") for the use and occupancy of the Project sufficient to pay the principal of and interest and premium, if any, on the Bonds (or to reimburse the Credit Provider, as hereinafter defined, for drawings on the Credit Facility (as hereinafter defined) used to pay debt service on the Bonds), and certain related expenses;

**WHEREAS**, the Bonds were issued as Variable Rate Bonds (as defined in the Original Indenture);

**WHEREAS**, on October 21, 2010, the Bonds were re-designated as the “City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E-1 (Ice Centre Refunding Project)” (the “Series 2008E-1 Bonds”), \$13,015,000 of which were outstanding as of such date, and the “City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E-2 (Ice Centre Refunding Project)” (the “Series 2008E-2 Bonds”), \$13,010,000 of which were outstanding as of such date;

**WHEREAS**, the payment of the principal of and interest on the Series 2008E-1 Bonds, and the purchase price of the Series 2008E-1 Bonds upon the optional or mandatory tender thereof was previously supported by an irrevocable direct-pay letter of credit issued by Bank of America, N.A., which was stated to expire on February 20, 2014;

**WHEREAS**, the payment of the principal of and interest on the Series 2008E-2 Bonds, and the purchase price of the Series 2008E-2 Bonds upon the optional or mandatory tender thereof, was previously supported by an irrevocable direct-pay letter of credit issued by U.S. Bank National Association, which was stated to expire on February 18, 2014;

**WHEREAS**, prior to the stated expiration dates of the irrevocable direct-pay letters of credit described above, the Authority and the Trustee entered into an Amended and Restated Indenture of Trust dated as of December 1, 2013 (the “Amended Indenture”), pursuant to which the interest rate on the Bonds was converted to an Index Rate on December 18, 2013;

**WHEREAS**, in connection with the conversion of the interest rate on the Bonds to an Index Rate under the Amended Indenture, U.S. Bank National Association (referred to in the Amended Indenture for so long as it owns the Bonds as the “Bank”) purchased the Bonds on a direct placement basis pursuant to a Continuing Covenant Agreement by and among the Authority, the City and the Bank, dated as of December 18, 2013 (the “Original Continuing Covenant Agreement”);

**WHEREAS**, the Bonds are subject to mandatory tender for purchase on the Initial Bank Purchase Date, which initially was December 18, 2016;

**WHEREAS**, the Authority and the Trustee, with the consent of the Bank, and pursuant to the authority set forth in Resolution No. 124 of the Governing Board of the Authority and Resolution No. 76874 of the City Council of the City, both adopted December 10, 2013, entered into a First Amendment to Amended and Restated Indenture dated as of December 1, 2016 (the “First Amendment”) pursuant to which the Initial Bank Purchase Date was extended to June 15, 2017;

**WHEREAS**, in connection with the extension of the Initial Bank Purchase Date to June 15, 2017, the Original Continuing Covenant Agreement was not amended or supplemented;

**WHEREAS**, the Authority and the Trustee, with the consent of the Bank, and pursuant to the authority set forth in Resolution No. 135 of the Governing Board of the Authority, entered into a Second Amendment to Amended and Restated Indenture dated as of June 1, 2017 (the “Second Amendment”) pursuant to which the Initial Bank Purchase Date was extended to December 13, 2019;

**WHEREAS**, in connection with the execution and delivery of the Second Amendment, and pursuant to the authority set forth in Resolution No. 135 of the Governing Board of the Authority and Resolution No. 78184 of the City Council of the City, each adopted May 23, 2017,

the Authority and the City entered into a First Amendment to Continuing Covenant Agreement dated as of June 15, 2017, by and among the Authority, the City and the Bank, pursuant to which the Original Continuing Covenant Agreement was amended (as so amended, the “Continuing Covenant Agreement”);

**WHEREAS**, the Authority and the Trustee, with the consent of the Bank, and pursuant to the authority set forth in Resolution No. 135 of the Governing Board of the Authority, entered into a Third Amendment to Amended and Restated Indenture dated as of December 1, 2019 (the “Third Amendment”) pursuant to which the Initial Bank Purchase Date was extended to June 9, 2020;

**WHEREAS**, the Authority and the Bank now desire to extend the Initial Bank Purchase Date to December 4, 2020, and amend the definition of LIBOR Index;

**WHEREAS**, pursuant to Section 9.01(a) of the Amended Indenture, the Authority now desires to amend the Amended Indenture, with the consent of the Bank, in order to further amend the definition of the Initial Bank Purchase Date;

**WHEREAS**, in connection with the execution and delivery of this Fourth Amendment, the City, the Authority and the Bank will execute and deliver the Second Amendment to the Continuing Covenant Agreement; and

**WHEREAS**, pursuant to Resolution No. \_\_\_ of the Governing Board of the Authority adopted June 2, 2020, the Governing Board of the Authority has authorized the execution and delivery of this Fourth Amendment and the Second Amendment to the Continuing Covenant Agreement;

**NOW, THEREFORE**, the parties hereto, in consideration of the premises and the mutual covenants and commitments of the parties set forth herein, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, hereby agree as follows:

## **AGREEMENT**

**Section 1. Amended Definitions.** The following defined term set forth in Section 1.01 of the Amended Indenture are hereby deleted and replaced with the following:

“Indenture” means the Amended and Restated Indenture of Trust, dated as of December 1, 2013, between the Authority and the Trustee, as amended by (i) the First Amendment to the Amended and Restated Indenture of Trust, dated as of December 1, 2016, between the Authority and the Trustee, (ii) the Second Amendment to the Amended and Restated Indenture of Trust, dated as of June 1, 2017, between the Authority and the Trustee, (iii) the Third Amendment to the Amended and Restated Indenture of Trust, dated as of December 1, 2019, between the Authority and the Trustee, and (iv) the Fourth Amendment to the Amended and Restated Indenture of Trust, dated as of June 1, 2020, between the Authority and the Trustee, in each case as originally executed and as they may from time to time be supplemented, modified or amended by any Supplemental Indenture.

“Initial Bank Purchase Date” means December 4, 2020.

“LIBOR Index” means the rate of interest per annum for United States Dollar deposits in the London Interbank Market, as quoted by the Calculation Agent from Reuters Screen LIBOR01 Page or any successor thereto, which shall be that one-month LIBOR rate in effect two Business Days prior to the LIBOR Index Reset Date or the LIBOR Index Rate Conversion Date, as the case may be, such rate to be reset monthly on each LIBOR Index Reset Date. If for any reason such LIBOR Index is unavailable and/or the Calculation Agent is unable to determine the LIBOR Index Rate for any LIBOR Index Rate Period, the Calculation Agent may, at its discretion, either: (a) select a replacement index based on the arithmetic mean of the quotations, if any, of the interbank offered rate by first class banks in London or New York for deposits with comparable maturities or (b) deem the LIBOR Index to be a rate per annum equal to the Calculation Agent’s Federal Funds Rate as of the first day of any LIBOR Index Rate Period for which such LIBOR Index is unavailable or cannot be determined; provided that the Calculation Agent shall give prompt written notice to the Authority and the Trustee setting forth such change in interest rate, the nature of the circumstances giving rise to such change, and the method of calculating such change if based on a replacement index. The Calculation Agent’s internal records of applicable interest rates shall be determinative in the absence of manifest error. Notwithstanding the foregoing, during the period commencing on June 9, 2020 and continuing up to and including the last day of the Initial Period, the LIBOR Index shall under no circumstances be less than 0.75%.

**Section 2. Effectiveness.** Except as otherwise amended hereby, the Amended Indenture, as heretofore amended by the First Amendment, the Second Amendment and the Third Amendment, shall remain in full force and effect. This Fourth Amendment, and the amendments to the Amended Indenture, as heretofore amended by the First Amendment, the Second Amendment and the Third Amendment, contained herein, shall become effective on June 9, 2020.

**Section 3. Counterparts.** This Fourth Amendment may be executed in counterparts.

[Signature Page Follows on Next Page]

IN WITNESS WHEREOF, the parties hereto have caused this Fourth Amendment to Amended and Restated Indenture of Trust to be duly executed by their officers duly authorized as of the date first above written.

CITY OF SAN JOSE FINANCING  
AUTHORITY

By: \_\_\_\_\_  
Julia H. Cooper,  
Treasurer

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:  
Richard Doyle  
City Attorney

By: \_\_\_\_\_  
Chief Deputy City Attorney

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as trustee

By: \_\_\_\_\_  
Authorized Officer

ACKNOWLEDGED AND CONSENTED TO:

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[signature page to Fourth Amendment to Amended and Restated Indenture of Trust - Ice Centre]