

**CITY OF SAN JOSE FINANCING AUTHORITY  
RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SAN JOSE FINANCING  
AUTHORITY APPROVING AND AUTHORIZING THE  
NEGOTIATION, EXECUTION AND DELIVERY OF A  
SECOND AMENDMENT TO CONTINUING COVENANT  
AGREEMENT RELATING TO THE CITY OF SAN JOSE  
FINANCING AUTHORITY LEASE REVENUE BONDS,  
SERIES 2008C (HAYES MANSION REFUNDING  
PROJECT) AND THE CITY OF SAN JOSE FINANCING  
AUTHORITY TAXABLE LEASE REVENUE BONDS,  
SERIES 2008D (HAYES MANSION REFUNDING  
PROJECT), APPROVING AND AUTHORIZING THE  
EXECUTION AND DELIVERY OF A FOURTH  
AMENDMENT TO AMENDED AND RESTATED  
INDENTURE OF TRUST, AND AUTHORIZING 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 and refinance 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 and refinancing for certain public capital improvements; and

**WHEREAS**, on June 26, 2008, pursuant to the provisions of Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code and an Indenture of Trust dated as of June 1, 2008 (as supplemented and amended by a First Supplemental Indenture of Trust dated as of October 1, 2010, the “Original Indenture”), between the Authority and Wells Fargo Bank, National Association, as trustee (the “Trustee”), the Authority issued its \$10,915,000 initial aggregate principal amount of City of San José Financing Authority Lease Revenue Bonds, Series 2008C (Hayes Mansion Refunding Project) (the “Series 2008C Bonds”) and its \$47,390,000 initial aggregate principal amount of City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008D (Hayes Mansion Refunding Project) (the “Series 2008D Bonds” and, together with the Series 2008C Bonds, the “Series 2008C/D Bonds”) in order to refinance the costs of certain improvements to the Hayes Mansion

Conference Center and the acquisition and construction of a public parking facility and certain park improvements; and

**WHEREAS**, pursuant to a Project Lease, dated as of June 1, 2008 (as heretofore amended, the "Project Lease"), the Authority agreed to lease the Project (as defined in the Original Indenture) to the City, and the City, pursuant to the Project Lease, agreed to make lease payments (the "Lease Payments") to the Authority 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; and

**WHEREAS**, the Bonds were issued as variable rate bonds; and

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

**WHEREAS**, prior to the stated expiration date of the Credit Facility issued by the Credit Provider, 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; and

**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 "Continuing Covenant Agreement"); and

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

**WHEREAS**, the Authority and the Trustee, with the consent of the Bank, and pursuant to the authority set forth in Resolution No. 123 of the Governing Board of the Authority and Resolution No. 76873 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; and

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

**WHEREAS**, Authority and the Trustee, with the consent of the Bank, and pursuant to the authority set forth in Resolution No. 134 of the Governing Body of the Authority and Resolution No. 78183 City Council of the City, both adopted May 23, 2017, 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 11, 2017; and

**WHEREAS**, in connection with the extension of the Initial Bank Purchase Date to December 11, 2017, the Authority, the City and the Bank entered into a First Amendment to Continuing Covenant Agreement (the "First Amendment to Continuing Covenant Agreement") dated as of June 15, 2017; and

**WHEREAS**, Authority and the Trustee, with the consent of the Bank, and pursuant to the authority set forth in said Resolution No. 134 of the Governing Body of the Authority and said Resolution No. 78183 of the City Council of the City, entered into a Third Amendment to Amended and Restated Indenture dated as of December 1, 2017 (the "Third Amendment"), pursuant to which the Initial Bank Purchase Date was extended to June 8, 2018; and

**WHEREAS**, in connection with the extension of the Initial Bank Purchase Date to June 8, 2018, neither the Continuing Covenant Agreement nor the First Amendment to Continuing Covenant Agreement was amended or supplemented; and

**WHEREAS**, the Authority, the City and the Bank now desire to extend the Initial Bank Purchase Date to December 3, 2018; and

**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 revise the definition of the Initial Bank Purchase Date set forth in the Amended Indenture, as amended by the First Amendment, the Second Amendment and the Third Amendment, in order to change the Initial Bank Purchase Date from June 8, 2018 to December 3, 2018, and to revise the formula for determining the interest rate on the Series 2008C Bonds; and

**WHEREAS**, such amendment will occur pursuant to a Fourth Amendment to Amended and Restated Indenture of Trust (the "Fourth Amendment") to be entered into by the Authority and the Trustee; and

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

Covenant Agreement”) in order to revise the formula for determining the interest rate on the Series 2008C Bonds; and

**WHEREAS**, the Governing Board (the “Board”) of the Authority has duly considered such transactions and wishes at this time to approve said transactions in the public interests of the Authority;

**NOW, THEREFORE**, BE IT RESOLVED by the Governing Board of the City of San José Financing Authority as follows:

**Section 1. Approval of Fourth Amendment.** The Board hereby approves the Fourth Amendment in the form posted on the agenda webpage for this joint meeting of the Authority and the City, together with such additions thereto and changes therein as the Executive Director of the Authority (the “Executive Director”) or the Treasurer of the Authority (the “Treasurer”), or the authorized designees of either the Executive Director or the Treasurer (which may include representatives of the City) (each, a “Designated Officer”), each acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney, as counsel to the Authority, the execution of which by the Authority shall be conclusive evidence of the approval of any such additions and changes. The Designated Officers, each acting alone, are hereby authorized to execute and deliver the final forms of the Fourth Amendment for and in the name and on behalf of the Authority.

**Section 2. Approval of Second Amendment to Continuing Covenant Agreement.** The Board hereby approves the Second Amendment to Continuing Covenant Agreement in the form posted on the agenda webpage for this joint meeting of the Authority and the City, together with such additions thereto and changes therein as the Designated Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney, as counsel to the Authority, the execution of which by the Authority shall be conclusive evidence of the approval of any such additions and changes. The Designated Officers, each acting alone, are hereby authorized to execute and deliver the final form of the Second Amendment to Continuing Covenant Agreement, in the name of and on behalf of the Authority.

The Board hereby authorizes the Designated Officers, each acting alone, to execute and deliver such documentation as is necessary to extend the Initial Bank Purchase Date (being December 3, 2018) by up to 180 days, and to subsequently execute and deliver such documentation as is necessary to extend the Initial Bank Purchase Date as extended, by additional increments of up to 180 days per extension, but only if the Series 2008C/D Bonds are, during any such period of extension, subject to the same terms and conditions as are contained in the Continuing Covenant Agreement, as amended by the First Amendment to Continuing Covenant Agreement and the Second Amendment to Continuing Covenant Agreement.

**Section 3. Official Actions.** The Designated Officers, the Secretary of the Authority and any and all other officers of the Authority are hereby authorized and directed, for and in the name of and on behalf of the Authority, 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 connection with the execution and delivery of the Fourth Amendment to Amended and Restated Indenture, the Second Amendment to Continuing Covenant Agreement, and the financing documents related thereto, including, but not limited to, taking all actions and certificates necessary to ensure that the interest on the Series 2008C Bonds remains excluded from the gross income of the holders thereof for purposes of federal income taxation.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Chair, City of San José  
Financing Authority

ATTEST:

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TONI J. TABER, CMC  
Secretary, City of San José  
Financing Authority