

---

---

**SECOND AMENDMENT TO CONTINUING COVENANT AGREEMENT**

dated as of June 1, 2018,

among

**CITY OF SAN JOSE FINANCING AUTHORITY,**

**CITY OF SAN JOSE**

and

**U.S. BANK NATIONAL ASSOCIATION**

Relating to

**CITY OF SAN JOSE FINANCING AUTHORITY  
LEASE REVENUE BONDS, SERIES 2008C  
(HAYES MANSION REFUNDING PROJECT)**

**AND**

**CITY OF SAN JOSE FINANCING AUTHORITY  
TAXABLE LEASE REVENUE BONDS, SERIES 2008D  
(HAYES MANSION REFUNDING PROJECT)**

---

---

This **SECOND AMENDMENT to CONTINUING COVENANT AGREEMENT**, dated as of June 1, 2018 (this “**Amendment**”), is among the CITY OF SAN JOSE FINANCING AUTHORITY (“**Authority**”), the CITY OF SAN JOSE (the “**City**”) and U.S. BANK NATIONAL ASSOCIATION (the “**Purchaser**”). Terms used herein with initial capital letters and not otherwise defined shall have the respective meanings attributed thereto in the Agreement (as defined below).

## **RECITALS**

WHEREAS, the Purchaser previously made a loan to the Authority by purchasing the Authority’s Lease Revenue Bonds, Series 2008C (Hayes Mansion Refunding Project) (the “**Series 2008C Bonds**”) and its Taxable Lease Revenue Bonds, Series 2008D (Hayes Mansion Refunding Project) (the “**Series 2008D Bonds**,” and together with the Series 2008C Bonds, the “**Bonds**”); and

WHEREAS, in connection with the Purchaser’s purchase of the Bonds, the Authority, the City and the Purchaser entered into the Continuing Covenant Agreement, dated as of December 18, 2013 (the “**Original Agreement**”), as amended by the First Amendment to Continuing Covenant Agreement, dated as of June 15, 2017 (the “**First Amendment**”; the Original Agreement, as amended by the First Amendment, the “**Revised Agreement**”); and

WHEREAS, the Purchaser, the Authority and the City have previously extended the Initial Bank Purchase Date, from time to time, so that the Initial Bank Purchase Date is June 8, 2018; and

WHEREAS, the Authority and Wells Fargo Bank, National Association, as trustee (the “Trustee”) for the Bonds are entering into a Fourth Amendment to Amended and Restated Indenture of Trust (the “Indenture”) (i) to extend the Initial Bank Purchase Date to December 3, 2018, and (ii) make certain changes relating to the calculation of the interest rate on the Series 2008C Bonds; and

WHEREAS, the Authority, the City and the Purchaser are making certain additional amendments to the Revised Agreement relating to the calculation of the interest rate on the Series 2008C Bonds; and

NOW, THEREFORE, in consideration of the respective agreements contained herein and in the Agreement, and intending to be legally bound, the Authority, the City, and the Purchaser hereby agree as follows.

## **ARTICLE I. INTENTION OF PARTIES, AGREEMENT PROVISIONS.**

The Authority, the City and the Purchaser have entered into this Amendment pursuant to Section 9.03 of the Revised Agreement to change certain terms set forth in the Revised Agreement. The terms of the Revised Agreement, as amended by this Amendment (as so amended, the “**Agreement**”), shall govern the rights and obligations of the Authority, the City, and the Purchaser in connection with the transactions contemplated by the Agreement. This Second Amendment shall become effective on June 8, 2018.

## **ARTICLE II. AMENDMENTS AND AGREEMENT.**

The Revised Agreement is hereby amended as follows:

(a) The definition of “Applicable Rate” in Section 1.01 of the Revised Agreement is hereby amended by deleting “39 basis points;” therein and replacing it with “43 basis points”.

(b) The definition of “Margin Rate Factor” in Section 1.01 of the Revised Agreement is hereby deleted and replaced with the following:

“ ‘*Margin Rate Factor*’ means the greater of (i) 1.0, and (ii) the product of (a) one minus the Maximum Federal Corporate Tax Rate multiplied by (b) 1.26582. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease in the Maximum Federal Corporate Tax Rate resulting in such change.”

(c) There is hereby added to Section 1.01 of the Revised Agreement the following definition, which is to be situated alphabetically:

“ ‘*Second Amendment*’ means that certain Second Amendment to the Continuing Covenant Agreement, dated as of June 1, 2018, among the Authority, the City and the Purchaser.”

## **ARTICLE III. CONDITIONS TO DELIVERY OF THIS AMENDMENT.**

The amendments to the Revised Agreement provided for in Article II hereof shall become effective on the date hereof; *provided* that each of the following conditions shall be fulfilled to the satisfaction of the Purchaser:

(a) Documentation:

- (i) Executed counterparts of this Amendment signed by the Authority, the City and the Purchaser; and
- (ii) All other legal matters pertaining to the execution and delivery of this Amendment shall be satisfactory to the Purchaser and the execution and delivery hereof by the Purchaser shall constitute conclusive evidence that all such legal matters have been completed to the satisfaction of the Purchaser.

(b) Representations and Warranties True.

(i) The representations and warranties of the Authority and the City contained in Article V of the Revised Agreement and in this Amendment shall be true and correct with the same effect as though made on and as of the date hereof, except to the extent a representation or warranty relates specifically to an earlier date (in which case, such representation and warranty shall be true and correct as of such date).

(ii) In addition to the foregoing representations, the Authority and the City hereby represent and warrant as follows:

(A) The execution, delivery and performance by the Authority and the City of this Amendment are within their powers, have been duly authorized by all necessary actions and do not contravene any law or any contractual restriction binding on or affecting the Authority and the City;

(B) No further authorization, approval or other action by, and no notice to or filing, is required for the due execution, delivery and performance by the Authority and the City of this Amendment that has not been received as of the date hereof; and

(C) This Amendment constitutes the legal, valid and binding obligation of the Authority and the City and is enforceable against the Authority and the City in accordance with its terms.

(c) Performance and Compliance. On or before the date hereof, the Authority and the City shall have performed and complied with all agreements and conditions in the Agreement and the other Related Documents which are required to be performed or complied with by the Authority and the City on or prior to the date hereof.

(d) Absence of Certain Events. (i) There shall not have occurred any material adverse change in the affairs, condition and/or operations, financial or otherwise, of the City since the date of the most recent financial information provided to the Purchaser pursuant to Section 6.02(i) of the Agreement; on or prior to the date hereof, no change shall have occurred in any law, rule or regulation or in any interpretation thereof that, in the opinion of the Purchaser, would make it illegal for the Purchaser to execute and deliver this Amendment; and (ii) no event has occurred which constitutes an Event of Default under the Agreement.

(e) Fees. The Authority or the City shall have paid, in immediately available funds, on or before the date hereof, the fees of Nixon Peabody LLP as set forth in an invoice provided to the City.

(f) Other Approvals. The Purchaser shall have received such other approvals, opinions, certificates, instruments and documents as it may reasonably request.

#### **ARTICLE IV. MISCELLANEOUS.**

(a) The parties hereto acknowledge and confirm that, from and after the date hereof, any reference in the Agreement or in the other Related Documents to the “Agreement” shall mean and refer to the Agreement as amended hereby.

(b) Except as provided herein, the Agreement shall remain in full force and effect and unaffected hereby except, as set forth herein, from and after the date hereof.

(c) This Amendment and the Revised Agreement, as amended hereby, shall be subject to section 9.09 of the Agreement. In case any one or more of the provisions contained

herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.

(d) This Amendment may be executed in one or more counterparts, each of which taken together shall constitute one original and all of which shall constitute one and the same instrument.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date hereof.

U.S. BANK NATIONAL ASSOCIATION

By \_\_\_\_\_  
Name: Jeffrey S. Kajisa  
Title: Vice President

CITY OF SAN JOSÉ FINANCING AUTHORITY

By \_\_\_\_\_  
Name: Julia H. Cooper  
Title: Treasurer

Approved as to form:  
Richard Doyle, City Attorney

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

CITY OF SAN JOSÉ

By \_\_\_\_\_  
Name: Julia H. Cooper  
Title: Director of Finance