



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL AND CITY  
OF SAN JOSE FINANCING  
AUTHORITY BOARD

**FROM:** Julia H. Cooper

**SUBJECT:** SEE BELOW

**DATE:** May 18, 2020

Approved

Date

5/21/20

**SUBJECT: ACTIONS RELATED TO THE CITY OF SAN JOSE FINANCING  
AUTHORITY LEASE REVENUE BONDS, SERIES 2008E (ICE CENTRE  
REFUNDING PROJECT)**

## RECOMMENDATION

It is recommended that the City Council:

- (a) Adopt a resolution approving and authorizing the negotiation, execution and delivery of a Second Amendment to the Continuing Covenant Agreement with U.S. Bank National Association relating to the City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E-1 and Series 2008E-2 (Ice Centre Refunding Project) and authorizing other related actions.

It is recommended that the City of San José Financing Authority Board:

- (b) Adopt a resolution approving and authorizing the negotiation execution and delivery of a Second Amendment to the Continuing Covenant Agreement with U.S. Bank National Association relating to the City of San Jose Financing Authority Taxable Lease Revenue Bonds, Series 2008E-1 and Series 2008E-2 (Ice Centre Refunding Project), and approving and authorizing the negotiation, execution and delivery of a Fourth Amendment to the Amended and Restated Indenture of Trust, and authorizing other related actions.

## **OUTCOME**

Approval of these recommendations will result in the extension of the ownership by U.S. Bank National Association (“U.S. Bank” or “the Bank”) of the City of San José Financing Authority (the “Authority”) Lease Revenue Bonds Taxable Series 2008E-1 and Series 2008E-2 (Ice Centre Refunding Project) (the “2008E Bonds”) for 178 days with the authority to subsequently execute and deliver such documentations as is necessary to extend the Initial Bank Purchase Date as extended, by additional increments of up to 180 days per extension with changes to the terms of the existing agreement as described in staff’s memorandum.

## **EXECUTIVE SUMMARY**

The current agreement for the direct purchase (private placement) of the 2008E Bonds by U.S. Bank expires on June 9, 2020. Staff has negotiated a short-term extension of the agreement with the Bank to continue ownership of the 2008E Bonds until December 4, 2020. The extension also provides for the ability to subsequently execute and deliver such documentations as necessary to extend the Initial Bank Purchase Date of December 4, 2020, by additional increments of up to 180 days per extension. It is anticipated that the Authority will issue Taxable Lease Revenue Bonds, Series 2020B (the “2020B Bonds”) for the Ice Centre expansion project in the Fall of 2020 and to refinance the Series 2008E-1 and Series 2008E-2 (Ice Centre Refunding Project). The extension of the agreement with U.S. Bank provides flexibility in bond issuance timing given the current market conditions if the issuance of the 2020B Bonds is delayed.

In coordination with the extension, some amendments are being made to the transaction documents to clarify some of the terms and to reflect increased pricing due to COVID-19. The fixed fee component of the interest rate associated with the outstanding debt will increase from 53 basis points (“bps”) (or 0.53%) to 75 bps (or 0.75%). The variable component of the interest rate on the 2008E Bonds will continue to be determined by the 1-month LIBOR index rate. Currently, there is \$11,175,000 principal outstanding on the 2008E Bonds, with a final maturity of June 2025.

Debt service payments are made on a monthly basis by the City from quarterly Rent payments made by Sharks Ice LLC in accordance to the amended and restated Ice Centre Lease and Management Agreement between the City and Sharks Ice LLC for the lease and management of the Ice Centre, currently known as Solar4America Ice at San Jose. Rent payments are made on February 1, May 1, August 1, and November 1 of each year, and each Rent payment provides for three months of debt service in advance of when it is due to the Trustee.

**BACKGROUND**

In December 2013, the City and the Authority executed a direct purchase of the 2008E Bonds by U.S. Bank for a three-year period. To effectuate the purchase, an Amended and Restated Indenture of Trust (the “Indenture”) between the Authority and Wells Fargo Bank National Association, as trustee, (the “Trustee”) and a Continuing Covenant Agreement (“CCA”) by and among the City, the Authority and U.S. Bank were executed. Additionally, in order to make technical changes to conform the terms of the leases with the Indenture, amendments were made to the Site and Facility Lease and the Project Lease. Upon the end of the three-year period in December 2016, the Director of Finance, as Treasurer of the Authority, as previously authorized, extended the term of the U.S. Bank’s ownership of the 2008E Bonds to June 15, 2017 by executing a First Amendment to the Indenture. Since then, the Bank’s ownership of the 2008E Bonds has been extended twice, to December 13, 2019 (Second Amendment to the Indenture and First Amendment to the CCA), then to June 9, 2020 (Third Amendment to the Indenture).

Beginning in December 2013, the 2008E Bonds have been in an “Index Mode,” whereby the interest rate has been based on 1-month LIBOR plus a spread in basis points (or bps) that has ranged from 53 bps to 75 bps.

Council and the Authority Board initially approved actions related to the direct sale of the 2008E Bonds to U.S. Bank at the joint Council/Authority meeting on December 10, 2013. The Key Assumptions and Terms section below, provides a list of changes since the CCA was executed in 2013.

The table below provides a summary of the 2008E Bonds including the current outstanding amount of each series. The total current outstanding amount is approximately \$11.2 million.

<b><i>Project:</i></b>	<b>Ice Centre</b>		
<b><i>Bond Series:</i></b>	2008E-1	2008E-2	Total
<b><i>Principal Outstanding<sup>(a)</sup>:</i></b>	\$5,590,000	\$5,585,000	\$11,175,000
<b><i>Tax Status:</i></b>	Taxable		
<b><i>2008E Bonds’ Purchaser:</i></b>	U.S. Bank		
<b><i>Agreement Expiration Date<sup>(b)</sup>:</i></b>	12/04/2020		

- (a) Principal outstanding as of June 1, 2020.
- (b) As approved by Council/Authority, the authority 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.

### ***Bank Proposal***

City staff solicited a proposal from U.S. Bank to continue to own the 2008E Bonds for a short-term period that allows for the issuance of the 2020B Bonds to refund the existing outstanding Ice Centre 2008E Bonds in conjunction with financing the expansion of the Ice Centre. U.S. Bank offered to extend the term of its ownership of the 2008E Bonds for up to 178 days until December 4, 2020, with no “make-whole” fee period in the event that the 2008E Bonds are refunded prior to December 4, 2020, but with an increase in the spread from 53 bps to 75 bps.

## **ANALYSIS**

### **Extension of Direct Purchase of the 2008E Bonds**

City staff has negotiated an extension of the direct purchase of the 2008E Bonds by U.S. Bank for a 178-day period expiring on December 4, 2020. During this period the 2008E Bonds will continue in an “Index Mode,” whereby the interest rate on the bonds will continue to be based on 1-month LIBOR plus a spread of 75 bps, as further described in “*Continuing Covenant Agreement – Pricing*”, below. Because the 2008E Bonds are not being remarketed during the Index Mode period, no public offering document is required in connection with this transaction, and no ratings are being procured. U.S. Bank has conducted its own analysis of the City’s finances and City staff has provided information to U.S. Bank in order for the Bank to make an informed investment decision to continue ownership of the 2008E Bonds.

### **Continuing Covenant Agreement**

#### **Overview**

The Continuing Covenant Agreement (“CCA”) includes the financial terms and conditions related to U.S. Bank’s purchase and ownership of the 2008E Bonds. The CCA describe the terms under which U.S. Bank purchased the 2008E Bonds, which includes the interest rates that will accrue and the term of the agreement. Pursuant to the CCA, as amended, the 2008E Bonds will be subject to mandatory tender at the end of the initial 178-day extension period on December 4, 2020 (the “Mandatory Tender Date”) (assuming the refunding of the existing 2008E Bonds does not occur by such time). On the Mandatory Tender Date, the Authority has the obligation to purchase the 2008E Bonds unless the Authority and U.S. Bank negotiate an extension. If an extension is not negotiated, the City may remarket the 2008E Bonds in a different mode or in an Index Mode with a different purchaser, or it may refund the 2008E Bonds in another variable rate mode or in a fixed rate mode. If the City fails to remarket the 2008E Bonds on the Mandatory Tender Date, and assuming no events of default have occurred, the CCA provides for a “term-out,” as described below.

**Pricing**

The 2008E Bonds will accrue interest at an index rate, which is the sum of the relevant floating rate index and the Applicable Rate, which is 0.75% (or 75 bps) an increase from 0.53% (or 53 bps) from the last CCA. The increase in the Applicable Rate is due to the volatile market conditions for credit, increased costs of capital funding and disruptions in capital markets due to COVID-19. Increased demand for credit and bank credit facilities has produced wider spreads and therefore increased the cost of borrowing for issuers. The floating rate index for the 2008E Bonds are based on 1-month LIBOR, a taxable index. The floating rate index is subject to a floor such that if 1-month LIBOR is less than 0.75%, then the floating rate index shall be 0.75%. The Applicable Rate increases if the credit ratings on the Authority’s rated lease revenue bonds are downgraded, as set forth in the following table and stated in the Second Amendment to the CCA:

<b><i>Lease Revenue Bond Ratings (Moody’s/S&amp;P/Fitch)</i></b>	<b><i>Applicable Rate</i></b>
Equal to Aa2/AA/AA or above	0.75%
Equal to Aa3/AA-/AA- or above	0.95%
Equal to A1/A+/A+	1.20%
Equal to A2/A/A	1.45%
Equal to A3/A-/A-	1.70%
Equal to Baa1/BBB+/BBB+	2.00%
Baa2/BBB/BBB or below	Default Rate

In the case of a split rating or differing ratings as between and among the rating agencies, for purposes of determining the Applicable Rate, (1) if three rating agencies then provide ratings on the Authority’s lease revenue bonds, the middle of such ratings shall apply and (2) if two rating agencies then provide ratings on the Authority’s lease revenue bonds, the lowest of such ratings shall apply. The credit ratings on the Authority’s relevant lease revenue bonds are currently ‘Aa3/AA/AA.’ Although Moody’s upgraded the Authority’s rated lease revenue bonds one notch to ‘Aa2’ on October 3, 2016 for debt on essential assets, including City Hall and the Central Service Yard, it maintained its rating on bonds for non-essential assets at ‘Aa3.’ Since the Ice Centre Bonds are directly placed with US Bank, they are not rated by any of the credit rating agencies.

**Key Terms and Covenants**

The CCA and the Indenture include the following key terms and covenants that are briefly summarized below. Other than the extension of the Mandatory Tender Date, the increase to the Applicable Rate and the elimination of the Optional Redemption or Conversion Fee period, the terms described below remain the same as in the original transaction documents. A summary of key terms is described below:

**Terms of the CCA – Proposed Changes**

Mandatory Tender Date      Extended 178 days until December 4, 2020

Applicable Rate	<i>Lease Revenue Bond Ratings (Moody's/S&amp;P/Fitch)</i>	<b>Applicable Rate</b>
		Equal to Aa2/AA/AA or above
	Equal to Aa3/AA-/AA-	0.95%
	Equal to A1/A+/A+	1.20%
	Equal to A2/A/A	1.45%
	Equal to A3/A-/A-	1.70%
	Equal to Baa1/BBB+/BBB+	2.00%
	Baa2/BBB/BBB or below	Default Rate

**Terms of the CCA – No Changes**

Base Rate      Highest of (i) the Bank's prime rate + 1%; (ii) Fed Funds Rate + 2%; (iii) SIFMA Index Rate + 1%; and (iv) 8.0%.  
  
 In the current interest rate environment, the highest of these four rates is the 8.0% per annum rate.

Purchaser Rate      Base Rate      (1-30 days after Mandatory Tender Date)  
                          Base Rate + 1.0%      (31-90 days after Mandatory Tender Date)  
                          Base Rate + 2.0%      (91-180 days after Mandatory Tender Date)  
                          Base Rate + 3.0%      (181+ days after Mandatory Tender Date)  
  
 This interest rate is charged to the Authority when the 2008E Bonds have not been remarketed or the agreement with U.S. Bank has not been extended at the Mandatory Tender Date.

Unremarketed 2008E Bonds - Term-Out      Assuming no events of default have occurred and subject to the Authority making certain representations and warranties, if the Authority fails to pay the Purchase Price on the Mandatory Tender Date, the Unremarketed 2008E Bonds will carry the Purchaser Rate described above and will be amortized/repaid in equal quarterly installments over a period ending three years after the Mandatory Tender Date only to the extent of the then fair rental value of the Ice Centre during each year of the amortization period.

Default Rate      Base Rate + 4.0%.  
  
 Applicable only in the event of a default.

Subordination of Swap Termination Fees	If the City or Authority enters into any interest rate swap agreement or other derivative contract for any debt with a claim on the general fund, termination fees related to that debt will be subordinate to payment obligations under the CCAs. Currently, the City’s Debt Management Policy does not permit swap agreements
Waiver of Jury Trial	The City, the Authority and the Bank each waive its right to jury trial. Further, the City and the Bank agrees that if a waiver of jury trial is unenforceable (which may be the case under California law), the dispute will be adjudicated by a judicial referee per the provisions of California law.
Increased Bank Costs and Capital Adequacy	Increased costs and changes in capital adequacy requirements include changes resulting from the Dodd-Frank Act and Basel III, regardless of the date of enactment. Provisions negotiated in the CCA include a requirement that the Bank notify the City and Authority when it knows it will be seeking to collect increased costs, and a provision that permits the City and Authority to terminate the CCA without premium in the event increased costs are billed to the City.
Repayment of Banks/Plan of Finance Obligation	No later than three years after the Mandatory Tender Date, the City Manager and the Executive Director of the Authority shall use their best efforts to bring forward a plan of finance for the issuance of bonds or certificates of participation sufficient in value to repay U.S. Bank for all obligations owed.
Sales and Transfers by U.S. Bank	While it is U.S. Bank’s intention to hold the Series 2008E Bonds through the Mandatory Tender Date, the Bank has the right under the CCA to sell or transfer all or a portion of the Series 2008E Bonds to one or more transferees that are either Affiliates of U.S. Bank or a trust or custodial arrangement established by U.S. Bank or an Affiliate, the owners of which must be a “qualified institutional buyer” (“QIB”) as defined in Rule 144A promulgated under the 1933 Act (“Purchaser Transferees”), or for all non-Affiliates of U.S. Bank those investors who also are a QIB (“Non-Purchaser Transferees”). Non-Purchaser Transferees are required to submit a Purchaser Letter. The form of the Purchaser Letter is included as an exhibit to the Indenture.
Waiver of Punitive / Consequential Damages	The City and the Authority waive any punitive and consequential damages against the Bank. Consequential damages, also known as special or indirect damages, are one kind of two types of damages (the other being direct damages) that may be awarded to a plaintiff in a civil action, where plaintiff claims the terms of an agreement were not honored. Consequential damages include loss

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of profit or revenues and may be recovered if it is determined that such damages were reasonably foreseeable at the time of the making of the contract.

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### **Amended and Restated Indenture of Trust**

In order to facilitate the private placement of the 2008E Bonds in 2013, it was necessary to amend and restate the prior indenture of trust. The Amended and Restated Indenture of Trust between the Authority and the Trustee (the “Indenture”) sets forth the obligations of the Authority with respect to payment of the debt service on the 2008E Bonds, the rights of the bondholders and the duties of the Trustee. The Indenture also specifies the mechanics of converting the 2008E Bonds from the Index Rate to another mode. These include variable rate modes such as the daily or weekly rate, or fixed rate mode. In connection with the proposed extension of U.S. Bank’s ownership of the 2008E Bonds, the Authority and the Trustee will enter into a Fourth Amendment to the Indenture in order to extend the period of the Bank’s ownership to December 4, 2020.

If after the end of the extension period (assuming the refunding of the existing 2008E Bonds does not occur by such time) the City and the Authority do not extend the current private placement with U.S. Bank or enter into a private placement with another bank, the City and the Authority would have the option of converting the 2008E Bonds to a fixed rate mode or a variable rate mode remarketed to the public. In order to convert the 2008E Bonds to a variable rate mode marketed to the public, the Authority would need to obtain one or more letters of credit or another form of liquidity support and prepare a public offering document (i.e., official statement).

### **Authorization to Execute Documents**

The Second Amendment to the Continuing Covenant Agreement with U.S. Bank, the Fourth Amendment to the Indenture, and the authorizing resolutions of the City Council and the Authority will be posted to the agenda webpage for the joint meeting of the City and the Authority. Staff recommends that the Executive Director or Treasurer of the Authority or their designees (the “Authority Designated Officers”) be authorized to execute these agreements, as posted, on behalf of the Authority and that the City Manager or the Director of Finance or their designees (the “City Designated Officers”) be authorized to execute the Continuing Covenant Agreement, as posted, on behalf of the City, with such modifications as the Authority Designated Officers or the City Designated Officers determine to be desirable or appropriate, upon consultation with the City Attorney.

Staff also recommends that the Designated Officers each be authorized to enter into one or more future extensions of the Bank’s ownership of the 2008E Bonds, not to exceed 180 days, under substantially the same terms and conditions.



### **Financing Team Participants**

The financing team participants consist of:

City Municipal Advisor:	Public Resources Advisory Group (“PRAG”)
Bond Counsel:	Jones Hall, APLC
Purchaser/Bank:	U.S. Bank National Association
Purchaser/Bank Counsel	Nixon Peabody
Trustee:	Wells Fargo Bank, N.A.

- Municipal Advisor – PRAG serves as the City’s General Municipal Advisor and is also in the City’s pool for financial advisory services selected through a request for proposal (“RFP”) process in November 2017 by the Finance Department.
- Bond Counsel – Jones Hall was selected through a RFP process by the City Attorney’s Office.
- Purchaser/Bank Counsel - Nixon Peabody is selected by the Bank. Per the terms of the CCA, the City and the Authority are responsible for payment of the fees of Bank Counsel.
- Trustee – Wells Fargo Bank, N.A. was previously selected to serve as Trustee for the 2008E Bonds in connection with the private placement of the 2008E Bonds with U.S. Bank in 2013.

### **Financing Schedule**

The current proposed schedule is as follows:

Council/Authority approval of agreements:	June 2, 2020
Document closing:	June 5, 2020
Effective date of extension of Bank ownership of 2008E Bonds:	June 9, 2020

### **CONCLUSION**

Approval of these recommendations will result in the extension of the ownership by U.S. Bank the 2008E Bonds for 178 days with the authority to subsequently execute and deliver such documentations as is necessary to extend the Initial Bank Purchase Date as extended, by additional increments of up to 180 days per extension with changes to the terms of the existing agreement as described in staff’s memorandum.

### **EVALUATION AND FOLLOW-UP**

The memorandum will not require any follow-up from staff.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San Jose energy, water, or mobility goals.

### **PUBLIC OUTREACH**

The form of the proposed agreements will be posted to the agenda webpage for the joint meeting of the City and the Authority on or about May 22, 2020.

### **COORDINATION**

This report was prepared by the Finance Department in coordination with the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

This recommendation has not been heard by any commission.

### **FISCAL/POLICY ALIGNMENT**

The proposed financing plan is consistent with the City's Debt Management Policy which establishes objectives in order to obtain cost-effective access to the capital markets, which includes minimizing debt service and issuance costs; maintaining access to cost-effective borrowing; and ensuring compliance with applicable State and Federal laws.

### **COST SUMMARY/IMPLICATIONS**

The recommended actions will result in no changes to costs already applicable to the 2008E Bonds pursuant to the documents being amended.

**BUDGET REFERENCE**

Compensation for bond counsel, bank counsel, trustee and the City’s financial advisor will be paid from Appn. #3737 pursuant to the 2019-2020 appropriations, shown below, for debt-related and financial advisory costs.

Fund #	Appn #	Appn. Name	Total Appn	2019-2020 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
432	3737	Ice Centre Debt Service Payment	\$2,385,000	X-50	6/18/2019, Ord. No. 30286

The cost for the professional services is estimated to be approximately \$17,500 (Bond Counsel - \$7,500; Bank Counsel - \$7,500; and Municipal Advisor - \$2,500).

**CEQA**

Not a Project, File No. PPI7-004, Government Funding Mechanism, or Fiscal activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment.

/s/

JULIA H. COOPER  
Director of Finance  
Treasurer of the Financing Authority

For questions, please contact Julia H. Cooper, Director of Finance, at (408) 535-7011.