

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AND AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF A SECOND AMENDMENT TO 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 (ICE CENTRE REFUNDING PROJECT) AND THE CITY OF SAN JOSE FINANCING AUTHORITY TAXABLE LEASE REVENUE BONDS, SERIES 2008E-2 (ICE CENTRE REFUNDING PROJECT), AND AUTHORIZING OTHER RELATED ACTIONS

WHEREAS, the City of San José (the “City”) and the Redevelopment Agency of the City of San José (the “Former Agency”) 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 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 and refinancing for certain public capital improvements for the City; and

WHEREAS, on July 3, 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 to the First Supplement to 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 \$28,070,000 initial aggregate principal amount of City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E (Ice Centre Refunding Project) (the “Series 2008E Bonds”) in order to refinance the costs of an ice skating facility owned by the City; and

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 Series 2008E Bonds (or to reimburse the Credit Provider (as defined in the Original Indenture) for drawings on the Credit Facility (as defined in the Original Indenture) used to pay debt service on the Series 2008E Bonds), and certain related expenses; and

WHEREAS, the Series 2008E Bonds were issued as variable rate bonds; and

WHEREAS, on October 21, 2010, the Series 2008E Bonds were re-designated (but still referred to collectively as the “Series 2008E Bonds”) 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; and

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; and

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; and

WHEREAS, prior to the stated expiration date of the irrevocable direct-pay letter of credit issued by Bank of America, N.A. and the stated expiration date of the irrevocable direct-pay letter of credit issued by U.S. Bank National Association, 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 Series 2008E Bonds was converted to an Index Rate on December 18, 2013; and

WHEREAS, in connection with the conversion of the interest rate on the Series 2008E 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 Series 2008E Bonds as the “Bank”) purchased the Series 2008E 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”); and

WHEREAS, the Series 2008E 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. 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; 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, 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; and

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”); and

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; and

WHEREAS, the Authority, the City and the Bank now desire to extend the Initial Bank Purchase Date to December 4, 2020; 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, to amend 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 extend the Initial Bank Purchase Date from June 9, 2020 to December 4, 2020, and amend the definition of LIBOR Index; 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; and

WHEREAS, the City Council has duly considered such transactions and wishes at this time to approve certain matters relating to said transactions in the public interest of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

Section 1. Approval of Second Amendment to Continuing Covenant Agreement.

The City Council 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 changes or additions thereto as the City Manager of the City (the "City Manager"), the Director of Finance of the City (the "Director of Finance") or the authorized designees of either the City Manager or the Director of Finance (each, a "Designated Officer"), each acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney, the execution of which by the City shall be conclusive evidence of the approval of any such additions and changes. The Designated Officers, each acting alone, are hereby authorized and directed to execute the final form of the Second Amendment to Continuing Covenant Agreement, in the name of and on behalf of the City.

The City Council hereby authorizes the Designated Officers, each acting alone, to execute and deliver such documentation as is necessary to further extend the Initial Bank Purchase Date (being December 4, 2020) by up to 180 days, but only if the Series 2008E 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 Second Amendment to Continuing Covenant Agreement.

Section 2. Official Actions. The Designated Officers, the City Clerk of the City 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 City, 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 Second Amendment to Continuing Covenant Agreement, and the documents related thereto, including, but not limited to, the Project Lease.

Any authority delegated under this Resolution to a specified official (including officials acting in these positions on an interim basis) may also be exercised by the specified official's authorized designee.

ADOPTED this ___ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk