

SECOND AMENDMENT TO CONTINUING COVENANT AGREEMENT

dated as of June 9, 2020,

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
TAXABLE LEASE REVENUE BONDS
SERIES 2008E-1
(ICE CENTRE REFUNDING PROJECT)**

AND

**CITY OF SAN JOSE FINANCING AUTHORITY
TAXABLE LEASE REVENUE BONDS
SERIES 2008E-2
(ICE CENTRE REFUNDING PROJECT)**

This **SECOND AMENDMENT to CONTINUING COVENANT AGREEMENT**, dated as of June 9, 2020 (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 Taxable Lease Revenue Bonds, Series 2008E-1 (Ice Centre Refunding Project) (the “**Series 2008E-1 Bonds**”) and its Taxable Lease Revenue Bonds, Series 2008E-2 (Ice Centre Refunding Project) (the “**Series 2008E-2 Bonds**,” and together with the Series 2008E-1 Bonds, the “**Bonds**”) that were issued pursuant to an Indenture of Trust, dated as of June 1, 2008, as amended by that certain First Supplemental Indenture of Trust, dated as of October 1, 2010 and as further amended and restated by that certain Amended and Restated Indenture of Trust, dated as of December 1, 2013, as subsequently amended, each between the Authority and Wells Fargo Bank, National Association, as trustee (the “**Trustee**”); 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**”); and

WHEREAS, the Authority, the City and the Purchaser previously made certain amendments to the Original Agreement pursuant to the First Amendment to Continuing Covenant Agreement dated as of June 15, 2017 (the “**First Amendment**,” and the Original Agreement, as amended by the First Amendment, the “**Revised Agreement**”); and

WHEREAS, the Authority, the City and the Purchaser have determined to make certain amendments to the Revised Agreement in connection with the Authority and the Trustee entering into an amendment to the Indenture to extend the Initial Bank Purchase Date as defined in the Indenture from June 9, 2020 to December 4, 2020;

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.

ARTICLE II. AMENDMENTS.

The Revised Agreement is hereby amended as follows:

- (a) The definition of “Applicable Rate” is hereby amended by deleting the first paragraph therein and the table that follows and replacing them with the following:

“*Applicable Rate*” means,

(i) during the period commencing on the Effective Date and continuing up to and including June 8, 2020, 53 basis points; provided, however, that in the event that the credit ratings assigned to the Authority’s Lease Revenue Bond Rating shall fall to the ratings specified below, the Applicable Rate will be increased upon each downgrade of the Authority’s Lease Revenue Bond Rating below its ratings as of the Effective Date by the corresponding additional basis points reflected below (with such increases in the Applicable Rate being cumulative):

Lease Revenue Bond Ratings (Moody's/S&P/Fitch)	Increase to Applicable Rate
Equal to Aa2/AA/AA or above	+0.0 bppa
Equal to Aa3/AA-/AA- or above	+15.0 bppa
Equal to A1/A+/A+	+15.0 bppa
Equal to A2/A/A	+15.0 bppa
Equal to A3/A-/A-	+15.0 bppa
Equal to Baa1/BBB+/BBB+	+15.0 bppa

and, (ii) during the period commencing on June 9, 2020 and continuing up to and including the last day of the Initial Period, 75 basis points; provided, however, that in the event that the credit ratings assigned to the Authority’s Lease Revenue Bond Rating shall fall to the ratings specified below, the Applicable Rate will be increased upon each downgrade of the Authority’s Lease Revenue Bond Rating below its ratings as of June 9, 2020, the effective date of the Second Amendment, to the corresponding Applicable Rate reflected below;

<i>Lease Revenue Bond Ratings (Moody’s/S&P/Fitch)</i>	Applicable Rate
Equal to Aa2/AA/AA or above	0.75%
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

- (b) 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 9, 2020, among the Authority, the City and the Purchaser.”

- (c) Section 4.05 of the Revised Agreement is hereby amended by deleting it in its entirety and replacing it with “RESERVED.”

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) Except as disclosed in writing to the Purchaser, 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