

CITY OF SAN JOSE FINANCING AUTHORITY
RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SAN JOSE FINANCING AUTHORITY AUTHORIZING THE ISSUANCE AND SALE OF ITS WASTEWATER REVENUE BONDS, SERIES 2022B IN THE NOT-TO-EXCEED PRINCIPAL AMOUNT OF \$300,000,000 TO REFUND THE CITY OF SAN JOSE FINANCING AUTHORITY SUBORDINATE WASTEWATER REVENUE NOTES, SERIES A, AND PAY THE COSTS OF ISSUING THE 2022B BONDS, APPROVING IN SUBSTANTIALLY FINAL FORM THE OFFICIAL STATEMENT, BOND PURCHASE AGREEMENT, INDENTURE AND INSTALLMENT PURCHASE CONTRACT, AND AUTHORIZING THE EXECUTIVE DIRECTOR AND OTHER AUTHORIZED OFFICERS OF THE AUTHORITY TO EXECUTE AND DELIVER THESE DOCUMENTS AND ANY OTHER RELATED DOCUMENTS AS NECESSARY IN CONNECTION WITH THE ISSUANCE AND SALE OF THE 2022B BONDS INCLUDING A FOURTH AMENDMENT TO THE CREDIT AGREEMENT BY AND AMONG THE CITY OF SAN JOSE, THE AUTHORITY AND WELLS FARGO BANK, NATIONAL ASSOCIATION AND A FOURTH AMENDED AND RESTATED FEE LETTER AGREEMENT

WHEREAS, the City of San José (the “City”) and the former Redevelopment Agency of the City of San José (the “Former Agency”) previously entered into a Joint Exercise of Powers Agreement (the “Joint Powers Agreement”) establishing the City of San José Financing Authority (the “Authority”) for the purpose, among others, of assisting the City in its financing needs; 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 pursuant to California Health and Safety Code Section 34178(b)(3), the joint exercise of powers agreement establishing the Authority remains in effect; and

WHEREAS, the City is empowered by its charter to own, operate and maintain systems, plants, buildings, works and other facilities for the collection, treatment and disposal of sewage and wastewater, including sewage treatment and disposal plants and works and facilities in connection therewith; and

WHEREAS, pursuant to such authority, the City owns and operates its sanitary sewer collection and conveyance system (the “Sanitary Sewer Collection System”); and

WHEREAS, pursuant to such authority, on May 6, 1959, the City and the City of Santa Clara entered into that certain Agreement Between San José and Santa Clara Respecting Sewage Treatment Plant regarding the ownership, operation, maintenance and use of the existing “San Jose-Santa Clara Water Pollution Control Plant” currently known as the “San José-Santa Clara Regional Wastewater Facility” (the “Treatment Plant” and, collectively with the Sanitary Sewer Collection System, the “Wastewater System”); and

WHEREAS, pursuant to such authority, the City is authorized to acquire, construct and install improvements, additions, and betterments to, and extensions and rehabilitations of, the Wastewater System (collectively, the “Projects”); and

WHEREAS, pursuant to Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, the Joint Powers Agreement, and Section 53580 et seq. of the Government Code of the State of California, the Authority is authorized to issue revenue bonds, notes or other evidences of indebtedness for the purposes of, among other things, financing and refinancing the acquisition, construction and installation of the Projects and refunding any bonds, notes or other evidences of indebtedness of the Authority or the City issued or incurred for such purpose; and

WHEREAS, the City previously determined to finance and refinance the acquisition, construction and installation of certain Projects (the “Prior Projects”); and

WHEREAS, the Authority previously determined to assist the City in the financing and refinancing of the Prior Projects by issuing its Subordinate Wastewater Revenue Notes, Series A (the “Prior Subordinate Notes”), which are currently outstanding in the aggregate principal amount of \$300,000,000; and

WHEREAS, in connection with the issuance of the Prior Subordinate Notes, the City determined to make installment payments to the Authority for the acquisition, construction and installation of the Prior Projects in an aggregate principal amount equal to the outstanding principal amount of the Prior Subordinate Notes; and

WHEREAS, the City has determined to refinance the acquisition, construction and installation of the Prior Projects; and

WHEREAS, the Authority has determined to assist the City in the refinancing of the acquisition, construction and installation of the Prior Projects by issuing its Wastewater System Revenue Bonds in one or more series (the “Series 2022B Bonds”) for the purpose of refunding the currently outstanding aggregate principal amount of the Prior Subordinate Notes and paying the costs of issuing the Series 2022B Bonds; and

WHEREAS, in furtherance of the foregoing, forms of the following documents have been prepared and submitted to the Authority for consideration and approval by the Governing Board of the Authority:

- a Master Indenture (the “Master Indenture”) between the Authority and Wilmington Trust, National Association (the “Trustee”) under which the Authority may issue Wastewater Revenue Bonds from time to time, including the Series 2022B Bonds;
- a First Supplemental Indenture (the “Supplemental Indenture” and, together with the Master Indenture, the “Indenture”) between the Authority and the Trustee providing for the issuance of the Series 2022B Bonds under the Master Indenture and specifying certain terms of the Series 2022B Bonds;
- a Master Installment Purchase Contract (the “Master Contract”) between the Authority and the City under which the Authority will acquire, construct and install Projects for the City and refinance the purchase price of Projects previously acquired, constructed and installed for the City from time to time and the City will agree to make installment payments in consideration thereof;
- a First Supplemental Installment Purchase Contract (the “First Supplemental Contract” and, together with the Master Contract, the “Installment Purchase Contract”) between the Authority and the City specifying the terms of the installment payments (the “2022B Installment Payments”) to be made by the City in connection with the issuance of the Series 2022B Bonds;
- a Bond Purchase Agreement (the “Bond Purchase Agreement”) among the Authority, the City and the underwriters named therein (the “Underwriters”) under which the Series 2022B Bonds will be sold to the Underwriters;
- a preliminary form of an Official Statement (the “Official Statement”) describing the Series 2022B Bonds and other matters relating to them; and

WHEREAS, the City Council has on this date, duly adopted a resolution titled “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE AMENDING AND RESTATING RESOLUTION NO. 78382 PROVIDING FOR THE ALLOCATION OF WASTEWATER SYSTEM REVENUES, THE PLEDGE OF WASTEWATER NET SYSTEM REVENUES AND ESTABLISHING COVENANTS TO SECURE THE PAYMENT OF OBLIGATIONS PAYABLE FROM WASTEWATER NET SYSTEM REVENUES” (the “Master Resolution”); and

WHEREAS, in the Installment Purchase Contract the City will designate the 2022B Installment Payments as Parity Obligations under the Master Resolution; and

WHEREAS, as Parity Obligations under the Master Resolution, the 2022B Installment Payments are payable solely from, and secured by a pledge of and lien on, the Net System Revenues (as defined in the Master Resolution) subject to the terms of, and as provided in, the Master Resolution; and

WHEREAS, the Series 2022B Bonds will be payable solely from, and secured by a pledge and lien on, the Revenues (as defined in the Indenture), including the 2022B Installment Payments, and the other assets pledged therefor in the Indenture; and

WHEREAS, pursuant to Section 5852.1 of the California Government Code, certain financial information relating to the Series 2022B Bonds has been disclosed and made public in the memorandum considered by the Governing Board of the Authority on November 15, 2022;

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

Section 1. The Authority's issuance of the Series 2022B Bonds, in an aggregate principal amount not to exceed \$300,000,000 and in accordance with the Indenture, as finally executed and delivered, is hereby authorized and approved.

Section 2. The proposed forms of Master Indenture and First Supplemental Indenture, as posted to the agenda webpage for this joint meeting of the Authority and the City, and their terms and conditions, are hereby approved. The structure, date, maturity date or dates (the final maturity to be not later than November 1, 2052), fixed interest rates, interest payment dates, forms, registration privileges, place or places of payment, terms of redemption, number, and other terms of the Series 2022B Bonds will be as provided in the Indenture as finally executed and delivered.

Section 3. The Executive Director, the Treasurer, the Assistant Finance Director of the City, the Deputy Director of Finance of the City responsible for managing the City's debt programs, and their authorized designees (each, an "Authorized Officer"), each acting alone, are hereby authorized and directed, for and on behalf of the Authority, to execute and deliver the Master Indenture and the First Supplemental Indenture, in substantially the forms posted to the agenda webpage for this joint meeting of the Authority and the City and with such changes as the Authorized Officer executing the same requires or approves, with the advice of the City Attorney as counsel to the Authority (the "City Attorney"), such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The Series 2022B Bonds are to be executed by the manual or facsimile signature of an Authorized Officer and must be in the form set forth in, and must otherwise be in accordance with, the Indenture. When the Series 2022B Bonds are so

executed, the Authority shall deliver them to the Trustee. The Trustee shall then authenticate the Series 2022B Bonds and deliver them to the Underwriters in accordance with written instructions an Authorized Officer signs on the Authority's behalf, which instructions the Authorized Officers, each acting alone, are hereby authorized and directed to sign and deliver to the Trustee. The instructions are to provide for the delivery of the Series 2022B Bonds to the Underwriters in accordance with the Bond Purchase Agreement upon payment by the Underwriters of the purchase price for the Series 2022B Bonds.

Section 5. The proposed forms of Master Contract and First Supplemental Contract, as posted to the agenda webpage for this joint meeting of the Authority and the City, and their terms and conditions, are hereby approved. The Authorized Officers, each acting alone, are hereby authorized and directed, for and on behalf of the Authority, to execute and deliver the Master Contract and the First Supplemental Contract, in substantially said forms with such changes as the Authorized Officer executing the same requires or approves, with the advice of the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof; provided, that the aggregate principal amount of the 2022B Installment Payments shall not exceed \$300,000,000 and the final 2022B Installment Payment shall be due not later than November 1, 2052.

Section 6. The proposed form of the Bond Purchase Agreement, as posted to the agenda webpage for this joint meeting of the Authority and the City, is hereby approved. The Authorized Officers, each acting alone are hereby authorized and directed, for and on behalf of the Authority, to execute and deliver the Bond Purchase Agreement, in substantially said form with such changes as the Authorized Officer executing the same requires or approves, with the advice of the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof; provided, that the true interest cost for the Series 2022B Bonds shall not exceed 6.0% and the Underwriters' compensation specified in the Bond Purchase Agreement shall not exceed 0.2% of the principal amount of the Series 2022B Bonds.

Section 7. The proposed form of Official Statement, as posted to the agenda webpage for this joint meeting of the Authority and the City, is hereby approved. The Authorized Officers, each acting alone, are hereby authorized and directed to execute and deliver to the Underwriters, for and on behalf of the Authority, a certificate deeming the preliminary Official Statement, in substantially said form and with such changes as the Authorized Officer executing the same approves after consultation with the City Attorney, to be final within the meaning of Securities Exchange Commission Rule 15c2-12. The Underwriters are hereby authorized to distribute the Official Statement in preliminary and final form. The Authorized Officers, each acting alone, are hereby authorized and directed to execute and deliver the final form of the Official Statement for and on behalf of the Authority, in substantially the form of the preliminary Official Statement with such changes as the Authorized Officer executing the same requires or

approves after consultation with the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 8. The Authorized Officers and each other appropriate officer of the Authority, each acting alone, are authorized and directed to negotiate, approve, execute and deliver, after consultation with the City Attorney, a Fourth Amendment to the Credit Agreement, dated as of October 1, 2017, among the City, the Authority and Wells Fargo Bank, National Association (the “Bank”), a Fourth Amended and Restated Fee Letter Agreement relating thereto between the Bank and the Authority, and any other related documents as necessary to conform the same with the issuance of the Series 2022B Bonds or the Master Resolution.

Section 9. All approvals, consents, directions, notices, orders, requests, and other similar actions permitted or required by any of the documents authorized by this Resolution, whether given or taken before or after the issuance of the Series 2022B Bonds (including, without limitation, any amendment of any of the documents authorized by this Resolution or other agreement related to the Series 2022B Bonds; any investment of proceeds of the Series 2022B Bonds; the addition, substitution, or replacement of underwriters; any agreements with paying agents; and the removal or replacement of the Trustee) may be given or taken by the Authorized Officers, each acting alone, without further authorization or direction by the Governing Board of the Authority. The Authorized Officers, each acting alone, are hereby authorized and directed to give any such approval, consent, direction, notice, order, or request and take such other actions and execute such documents that any Authorized Officer deems necessary or desirable, in such Authorized Officer’s discretion, to further the purposes of this Resolution.

Section 10. The Authorized Officers and each other appropriate officer of the Authority, each acting alone, are authorized and directed (a) to execute and deliver on the Authority’s behalf any and all agreements, certificates, documents, and instruments, including, without limitation, signature certificates, no-litigation certificates, disclosure certificates, tax certificates, letters of representation relating to book-entry registration, certificates concerning the representations in the Bond Purchase Agreement, certificates concerning the contents of the Official Statement, and certificates and contracts for rebate compliance services; and (b) to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions approved in this Resolution. Any Authorized Officer may appoint in writing a designee to perform any of the actions that such Authorized Officer may take under this Resolution.

Section 11. The Authorized Officers, each acting alone, are hereby authorized to do any or all of the following if such Authorized Officer determines that it will be advantageous to the Authority or the City:

(a) to purchase municipal bond insurance or other credit enhancement for some or all of the Series 2022B Bonds;

(b) to obtain a particular rating or ratings on all or a portion of the Series 2022B Bonds and take such other actions as may be necessary to obtain the rating or ratings;

(c) to negotiate the terms of a commitment for a municipal bond insurance policy or other credit enhancement; and

(d) to negotiate and approve, after consultation with the City Attorney, any covenants of the Authority or changes to the proposed forms of the Master Indenture, First Supplemental Indenture, Master Contract, First Supplemental Contract, Bond Purchase Agreement, and Official Statement that may be necessary or appropriate to purchase a municipal bond insurance policy or other credit enhancement or to obtain a particular rating or ratings on all or a portion of the Series 2022B Bonds.

Section 12. All actions heretofore taken by the Authorized Officers, and any and all other officers and agents of the Authority, in connection with the issuance of the Series 2022B Bonds and the other actions contemplated by this Resolution are hereby ratified, confirmed and approved.

Section 13. This Resolution shall take effect from and after its adoption.

ADOPTED this 15th day of November, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Chair, City of San José Financing Authority

ATTEST:

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