



Memorandum

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

FROM: Julia H. Cooper
Kerrie Romanow

SUBJECT: SEE BELOW

DATE: November 1, 2022

Approved

Date

11/2/22

**SUBJECT: APPROVAL OF THE SALE AND ISSUANCE OF BONDS AND
RELATED BOND DOCUMENTS FOR CITY OF SAN JOSE
FINANCING AUTHORITY WASTEWATER REVENUE BONDS,
SERIES 2022B (GREEN BONDS – CLIMATE BOND CERTIFIED)**

RECOMMENDATION

(a) City Council:

- (1) Adopt a resolution to approve the issuance and sale of the City of San José Financing Authority Wastewater Revenue Bonds, Series 2022B (Green Bonds – Climate Bond Certified) (“2022B Bonds”) in the not-to-exceed principal amount of \$300,000,000 to refund the Authority’s outstanding Subordinate Wastewater Revenue Notes, Series A, pay the costs of issuing the 2022B Bonds, and approve in substantially final form the Official Statement, Bond Purchase Agreement, Continuing Disclosure Certificate, Installment Purchase Contract, authorize the City Manager and other authorized officers of the City, 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 City of San José, City of San José Financing Authority and Wells Fargo Bank, National Association, and a Fourth Amended and Restated Fee Letter Agreement.
- (2) Adopt a resolution to amend and restate 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 System Revenues.

(b) City of San José Financing Authority Board adopt a resolution to authorize the issuance and sale of the 2022B Bonds in the not-to-exceed principal amount of \$300,000,000 to refund the Authority’s Subordinate Wastewater Revenue Notes, Series A, pay the costs of issuing the 2022B Bonds, and approve in substantially final form the Official Statement, Bond Purchase

Agreement, Indenture and Installment Purchase Contract, authorize 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 City of San José, City of San José Financing Authority and Wells Fargo Bank, National Association, and a Fourth Amended and Restated Fee Letter Agreement.

OUTCOME

Approval of these recommendations will authorize the issuance and sale of the City of San José Financing Authority (the “Authority”) Wastewater Revenue Bonds, Series 2022B (Green Bonds – Climate Bond Certified) to (i) refund the Authority’s outstanding Subordinate Wastewater Revenue Notes, Series A (the “Notes”) to establish a long-term fixed-rate debt structure in a rising interest rate environment, (ii) amend and restate Resolution No. 78382 (“Master Resolution”) to exclude South Bay Water Recycling Program revenues and maintenance and operation costs from Wastewater System Revenues in addition to other conforming changes, (iii) amend and restate the credit agreement with Wells Fargo Bank, National Association (“Bank”) and fee letter to conform with the issuance and sale of the 2022B Bonds, and (iv) pay for the cost of issuing the 2022B Bonds. After the refunding of the Notes, additional Subordinate Wastewater Revenue Notes will be available for additional borrowings while the credit agreement with the Bank stays in effect.

EXECUTIVE SUMMARY

The issuance and sale of the 2022B Bonds in a principal amount not to exceed \$300,000,000 will (i) refund the Authority’s Notes, which are currently outstanding in the principal amount of \$300,000,000, (ii) amend and restate the Master Resolution to exclude South Bay Water Recycling Program revenues and maintenance and operation costs from System Revenues in addition to other conforming changes, (iii) amend and restate the credit agreement with Wells Fargo Bank, National Association (“Bank”) and fee letter to conform with the issuance and sale 2022B Bonds, and (iv) pay the costs of issuing the 2022B Bonds. The 2022B Bonds are contemplated to be issued as long-term fixed rate bonds amortized over 30 years with level debt service.

BACKGROUND

Treatment Plant Overview

The San José-Santa Clara Water Pollution Control Plant¹ (“Treatment Plant”) is a regional wastewater facility serving eight South Bay cities and unincorporated areas of the County. The Treatment Plant is jointly owned by the cities of San José and Santa Clara and is administered and operated by the City of San José Environmental Services Department (“ESD”) on behalf of the City and Santa Clara and their tributary partners. The tributary partners, hereinafter referred to as the “Tributary Agencies” include the City of Milpitas, West Valley Sanitary District (Campbell, Los Gatos, Monte Sereno, and Saratoga), Cupertino Sanitary District (Cupertino), County Sanitation District 2-3 (unincorporated County) and Burbank Sanitation District (unincorporated County). In addition to operating the Treatment Plant, ESD is responsible for planning, designing, and constructing capital improvements at the Treatment Plant, including water reclamation facilities, in collaboration with the Department of Public Works.

The Treatment Plant Capital Improvement Program (“CIP”) is a 10-year, \$1.5 billion plan to rebuild and modernize the facility and its processes. The development of the CIP is guided by the Plant Master Plan (“PMP”)², a 30-year planning-level document focused on long-term rehabilitation and modernization of the Treatment Plant. The PMP originally recommended more than 114 capital improvement projects to be implemented over 30 years at an estimated investment level of approximately \$2.0 billion. The PMP was approved by both San José and Santa Clara City Councils in late 2013. In 2014, the City completed a project validation process and analyzed the criticality, sequencing, and interconnectivity of the PMP projects, and packaged them for more efficient project implementation, resulting in updated project schedules and cost estimates that make up the 10-year, \$1.5 billion CIP.

Ten-Year Funding Strategy

Since early 2014, City staff has been working with representatives from Santa Clara and the Tributary Agencies to develop a ten-year funding strategy to provide sustained funding for the \$1.5 billion CIP and to allow the Tributary Agencies to participate with the City, and possibly Santa Clara, in financing the projects to allow the recognition of costs to ratepayers over the life of the projects instead of through pay-as-you-go funding. On May 19, 2015, City Council approved the Ten-Year Funding Strategy³, and on January 12, 2016, approved an updated Funding Strategy⁴.

¹ On March 26, 2013, the City Council approved changing the name of the Treatment Plant to the San José-Santa Clara Regional Wastewater Facility for use in public communications and outreach.

² Plant Master Plan: <https://www.sanjoseca.gov/home/showpublisheddocument/206/636611441889800000>

³ May 19, 2015, SJ-SC Ten-Year Funding Strategy:
http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=732&meta_id=516433

⁴ January 12, 2016, Updated Funding Strategy:
http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2118&meta_id=550326

Historically, the City has utilized the San José-Santa Clara Clean Water Financing Authority as issuer of bonds to finance improvements at the RWF where one or more tributary agencies and/or the City of Santa Clara were also financing capital costs. The Tributary Agencies and Santa Clara currently are not participating in the proposed financing and plan to independently finance their shares of capital costs. The Tributary Agencies and Santa Clara have continued to remit their quarterly payments timely for allocated capital costs. Given Santa Clara and the Tributary Agencies are self-funding their portion of the capital costs, the City has elected to issue bonds through the Authority.

Subordinate Wastewater Notes

The Subordinate Wastewater Notes Credit Agreement (the “Agreement”) was established on October 19, 2017⁵ among the City, the Authority, and the Bank as an interim financing facility (“Facility”) to help bridge the financing gap between cash available to fund CIP projects for the Treatment Plant. The interim financing facility is evidenced by subordinate wastewater revenue notes that can be outstanding at any one time in an amount not to exceed \$300 million to finance capital improvements at the Treatment Plant. The Facility allows the City to borrow funds and pay costs as the funds are needed, thereby minimizing the interest expense compared to a bond issuance which requires interest on the full balance to begin upon closing, whether the proceeds have been expended or not. As the projects progress and the funds are drawn on the Facility, it is anticipated the Authority will periodically pay off the Facility with long-term financing as is occurring with the issuance of the 2022B Bonds. The fees related to the Facility are paid by the installment payments made by the City to the Authority from pledged system revenues received by the City related to the Treatment Plant and the sewer collection and conveyance system (the “Sanitary Sewer Collection System,” and together with the Treatment Plant, the “Wastewater Treatment System”) less maintenance and operation costs of the Wastewater Treatment System (“Net System Revenues”). There is no pledge of funds from the City’s General Fund.

In June 2018, the City and Authority approved the First Amendment of the Credit Agreement and Amended and Restated Fee Letter Agreement⁶ to adjust the calculation of interest and fees for tax-exempt notes to address increased borrowing cost under the terms of the Agreement resulting from tax changes in the Tax Cuts and Jobs Act (“Tax Act”).

In September 2020, the City and Authority⁷ approved a Second Amendment to the Credit Agreement to extend the terms for an additional three years through October 18, 2023, made changes to pricing that increased the borrowing cost and amended various definitions.

⁵ October 3, 2017 joint City Council/Authority Meeting:
<https://sanjose.legistar.com/LegislationDetail.aspx?ID=3160813&GUID=4F5AB017-FAEA-40D4-88BD-929872E259CD&Options=&Search=>

⁶ June 26, 2018 joint City Council/Authority Meeting:
<https://sanjose.legistar.com/LegislationDetail.aspx?ID=3523897&GUID=34807D4E-EE17-4390-BF06-2421483C15A4&Options=&Search=>

⁷ September 18, 2020 joint City Council/Authority Meeting:

In March 2022, the City and the Authority⁸ approved a Third Amendment to the Credit Agreement and a Third Amended and Restated Fee Letter Agreement to revise the calculations of interest on the notes and amended various definitions.

The current Agreement for the interim financing of capital improvements to the Treatment Plant with the Bank expires on October 18, 2023. The Facility is currently outstanding in the principal amount of \$300 million, which provides the City with an opportunity to refund the outstanding Notes with long-term fixed rate bonds that are expected to be amortized over 30 years with level debt service. As a result, the Facility will become available for City to draw another \$300 million for eligible capital improvements to the Treatment Plant, as needed.

ANALYSIS

The following section addresses staff's recommendation to adopt the Authorizing Resolutions and includes discussions of the plan of finance, the 2022B Bonds, designation as Green Bonds – Climate Bond Certified, bond financing documents, financing team participants and financing schedule.

Plan of Finance

The 2022B Bonds are being issued to refund the Authority's outstanding Notes, all subject to optional prepayment at any time. Within 90 days of the closing date, proceeds of the Series 2022B Bonds will be remitted to the Bank to prepay the Notes in full, which are currently outstanding in the principal amount of \$300 million.

The 2022B Bonds will be priced as tax-exempt bonds. In the municipal bond market, investors prefer an above-market rate coupon structure, which generates bond premium for the issuer. In other words, investors would rather pay more for bonds offering 5% or 5.25% interest when current interest rates are much lower than 5% than purchasing a bond at par (100%) and receiving a lower coupon. Wells Fargo Corporate & Investment Banking, the Senior Manager for the 2022B Bonds, estimates that under current market conditions, the greatest demand for the 2022B Bonds will come from maturities with premium 5% and 5.25% coupons which would provide sufficient proceeds (par plus premium) to repay the Authority's outstanding Notes and pay for the cost of issuing the 2022B Bonds.

<https://sanjose.legistar.com/LegislationDetail.aspx?ID=4641751&GUID=A1287E5D-FF9A-49C3-93E8-E1AF35535F7B&Options=ID|Text|&Search=Fee+Letter+Agreement+with+Wells+Fargo>

⁸ March 29, 2022 joint City Council/Authority Meeting:

<https://sanjose.legistar.com/LegislationDetail.aspx?ID=5526174&GUID=79A3BF0D-56F7-4D49-899E-4AF66B8EF236&Options=ID|Text|&Search=>

Security and Source of Payment for the 2022B Bonds

The 2022B Bonds are limited obligations of the Authority payable from and secured by a pledge of the Revenues. The Revenues consist of the 2022B Installment Payments made by the City pursuant to a Master Installment Purchase Contract, dated December 1, 2022 (the “Master Installment Purchase Contract”), between the Authority and the City, as supplemental by a First Supplemental Installment Purchase Contract. The City’s Installment Payments made by the City to the Authority are secured by a pledge of the Net System Revenues.

According to the master agreements with Santa Clara and the Tributary Agencies, the Tributary Agencies pay for a portion of costs for maintenance, operation and capital improvements to the Treatment Plant based on self-reported discharge to the Treatment Plant and their contractual capacity in the Treatment Plant, respectively. The balance of the costs is shared between Santa Clara and the City on a pro rata basis determined by the ratio of each city’s assessed valuation to the sum of both cities’ assessed valuation.

South Bay Water Recycling Program Revenue and Expenses

Approximately 80% of the treated water from the Treatment Plant is piped to an outfall channel. From there, it flows to the Artesian Slough, through Coyote Creek, and eventually into the South San Francisco Bay. The remaining 20% of the treated water flows to the Treatment Plant’s advanced treated recycled water facility and related facilities of the South Bay Water Recycling system and program (the “South Bay Water Recycling Program”) to produce recycled water that meets the standards to remove contaminants set forth in Chapter 3 of Division 4 of Title 22 of the California Code of Regulations. The South Bay Water Recycling Program was designed to help divert treated wastewater from the South San Francisco Bay and has also provided a beneficial use for the product (treated wastewater) to help offset demands for potable water in the region.

For the purposes of the 2022B Bonds issuance, Resolution No. 78382, adopted by the City Council on October 3, 2017 (the “Original Master Resolution”), has to be amended and restated to exclude South Bay Water Recycling Program revenues and operating and maintenance costs from the pledged Net System Revenues and excluded from the definition of Treatment Plant for the purposes of financing. This may provide more flexibility with respect to the City’s ability to participate in regional efforts to expand both non-potable and potentially potable water in the future using Regional Wastewater Facility effluent while in conformance with requirements of the Master Agreements, applicable Treatment Plant permits and Prop 218, as a part of the effort to accomplish Climate Smart San José goals.

Description of the 2022B Bonds

2022B Bonds Estimated Sources and Uses of Funds.

The estimated sources and uses of the 2022B Bonds for the financing are shown below:

City of San José Financing Authority Wastewater Revenue Bonds, Series 2022B (Green Bonds – Climate Bond Certified) Estimated Sources and Uses of Funds*	
<u>Sources of Funds</u>	
Par Amount of 2022B Bonds	\$275,570,000
Premium	25,624,217
Total Sources	\$301,194,217
<u>Uses of Funds</u>	
Repay Notes	\$300,000,000
Costs of Issuance	714,234
Total Underwriter's Discount (\$1.742/\$1,000)	479,983
Total Uses	\$301,194,217
* Preliminary, subject to change.	

No Debt Service Reserve Fund

Due to the Wastewater System's current financial condition and investors' changing requirements, the establishment of a debt service reserve fund is not included in the financing documents and is not required to successfully market the 2022B Bonds.

2022B Bonds Good Faith Estimates

Wells Fargo Corporate & Investment Banking, Senior Manager for the 2022B Bonds has provided the following good faith estimates in compliance with Section 5852.1 of the California Government Code and has estimated the following, all of which are subject to changing market conditions and may be higher or lower than estimated:

- True interest cost for the 2022B Bonds is approximately 4.34%, which assumes market conditions as of October 19, 2022;
- Finance charge for 2022B Bonds is estimated to be \$1,194,217 (assumes \$714,234 in Cost of Issuance for Bond Counsel/Disclosure Counsel fees and expenses, Municipal Advisor fees and expenses, rating agencies fees, trustee fees and expenses, Green Bonds designation fees and expenses, printing costs; and \$479,983 for underwriters' discount);

- Estimated proceeds of the 2022B Bonds expected to be received by the Trustee assuming the Estimated Principal Amount of the 2022B Bonds is sold plus net premium, and based on market interest rates prevailing at the time of preparation of such estimates, less the finance charges of the 2022B Bonds, as estimated above, is \$300,000,000 to prepay the Notes; and
- Total payment amount (principal and interest) of the 2022B Bonds is estimated to be \$543,002,498 to the final maturity.

Designation as Green Bonds – Climate Bond Certified

On August 26, 2022, the City, with the assistance of its Co-Senior Manager, Morgan Stanley released a request for qualifications (“RFQ”) to solicit proposals from qualified firms interested in providing a second party opinion as to the designation of the 2022B Bonds as “green bonds” due to the proposed use of the net proceeds to repay the Notes and the capital improvements to the Treatment Plant funded thereby. On September 8, 2022, the City received proposals from four firms. Based on the statement of qualifications provided by the proposers, the RFQ evaluation committee, in accordance with the selection process and evaluation criteria selected Kestrel Verifiers.

The City has applied to the Climate Bonds Initiative (“CBI”) for designation of the 2022B Bonds as “Green Bonds - Climate Bond Certified”. CBI is an independent non-for-profit organization that works on mobilizing the bond market for climate change solutions. In order to receive the CBI certification, the City engaged Kestrel Verifiers, a third-party CBI Approved Verifier, to provide verification to the CBI Certification Board that the 2022B Bonds meet the CBI standards and relevant sector criteria. Kestrel Verifiers is anticipated to provide verification to CBI on November 2, 2022. The City anticipates CBI will certify the 2022B Bonds as Climate Bonds prior to distribution of the preliminary official statement for the 2022B Bonds to potential investors. There is no guarantee such certification will be received as currently anticipated. The City believes that continuing disclosure obligations associated with Green Bond – Climate Certified designation can be met and is consistent with requirements of the continuing disclosure certificate.

2022B Bond Financing Documents

Both the City Council and the Authority Board must adopt resolutions authorizing the issuance and sale of the 2022B Bonds (“City Authorizing Resolution” and the “Authority Authorizing Resolution”, collectively, the “Authorizing Resolutions”) and other related actions. The Authorizing Resolutions authorize the issuance and sale of the 2022B Bonds in the principal amount not to exceed \$300,000,000 with a final maturity of November 1, 2052. Both Authorizing Resolutions, along with the bond documents described below, will be posted to the agenda webpage for this joint meeting of the City Council and Authority Board on November 15, 2022.

There are bond financing documents that require City Council and/or Authority Board approval to proceed with the issuance of 2022B Bonds. Staff recommends the City Manager, the Director of Finance, the Assistant Director of Finance, the Deputy Director of Finance responsible for managing the City's debt programs, or their authorized designees (each, an "Authorized Representative") be authorized to execute the documents on behalf of the City and the Authority as described below. As modifications may be required prior to the closing, staff also recommends the Authorized Officers each be authorized to execute the final version of each of these agreements as may be modified upon consultation with the City Attorney's Office. In addition to these agreements, there are other agreements or documents that will be executed in connection with the issuance of the 2022B Bonds including conforming amendments to the Credit Agreement and Fee Letter with the Bank. Staff recommends the Authorized Officers each be authorized to execute these other agreements and documents upon consultation with the City Attorney's Office.

On or about November 3, 2022, the following financing documents for the 2022B Bonds described below, in substantially final form, will be posted to the City's agenda website for the November 15, 2022 joint meeting of the Authority Board and City Council. These documents are required to be approved by City Council and Authority Board for the Authority to issue the 2022B Bonds.

Official Statement. Pursuant to the City's *Administrative Disclosure Policies and Procedures for Municipal Debt*⁹, the draft Preliminary Official Statement ("POS") was reviewed and approved for transmittal to the City Council by the Disclosure Working Group on October 26, 2022. The distribution of the POS by the City is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the POS to include all facts that would be material to an investor in the 2022B Bonds. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the 2022B Bonds. If the City Council concludes the POS includes all facts that would be material to an investor in the 2022B Bonds and authorizes staff to proceed with the issuance of the 2022B Bonds, then one of the actions the City will take in the Authorizing Resolution is to authorize staff to execute a certificate to the effect that the POS has been "deemed final."

The Securities and Exchange Commission (the "SEC") has issued guidance as to the duties of the City with respect to its approval of the POS. The SEC stated that, if a member of the authorizing board has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the 2022B Bonds, whether relating to their repayment, tax status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should

⁹ City Administrative Disclosure Policies and Procedures for Municipal Debt - <https://www.sanjoseca.gov/home/showpublisheddocument/61169/637292207533100000> defines the Disclosure Working Group as the City Manager, City Attorney, City Budget Director and City Finance Director and other members of City's senior staff as deemed appropriate for inclusion and in the case of the 2022B Bonds included the Director and Assistant Director of the Environmental Services Department.

endeavor to discover whether such facts are adequately disclosed in the POS. The SEC has stated the steps that a member of the City Council could take include becoming familiar with the POS and questioning staff and consultants about the disclosure of such facts concerning the following areas:

Purpose of Financing	Risks Relating to Repayment of the 2022B Bonds, as applicable
Documents for Approval; Security for the 2022B Bonds	Requested Approvals

The information to address these areas in the POS can be found in the body of the document in the INTRODUCTION section which describes the purpose of the 2022B Bonds and the source of repayment, among other things. More detailed information on these topics and on the risks related to repayment of the 2022B Bonds can be found in CERTAIN RISK FACTORS as well as in Appendix A. Appendix A provides demographic, economic, and financial information about the City. Appendix B, which provides detailed information regarding the Federated retirement plan, is included to give investors an understanding of the impact of retirement costs on the revenues of the Wastewater System.

Staff recommends that City Council approve the POS in substantially the form posted to the agenda webpage for this meeting, with such additions thereto or changes therein as any of the Authorized Officers, acting alone, shall deem necessary, desirable, or appropriate upon consultation with the City Attorney. Staff further recommends each Authorized Officer be authorized and directed, for and on behalf of the City and the Authority, to execute all certificates necessary to deem final the POS as of its date, with the exception of certain final pricing and related information. Staff has carefully reviewed the information contained in the draft POS and believes it to be accurate and complete in all material aspects. Staff further recommends the Authorized Officers be authorized and directed, each acting alone for and on behalf of the City, pursuant to the Authorizing Resolutions, to execute and deliver the Official Statement with such additions thereto or changes therein, as necessary.

If any Councilmember has personal knowledge that any of the material information in the POS is false or misleading, the Councilmember must raise these issues prior to approval of the distribution of the document to potential investors in the 2022B Bonds.

City staff, representatives of Jones Hall, A Professional Law Corporation, the City's disclosure counsel, Orrick Herrington & Sutcliffe, the City's bond counsel for the 2022B Bonds, and representatives of Public Resources Advisory Group, the City's Municipal Advisor for the bonds, will be available during the City Council meeting on November 15, 2022 to address any questions, issues, and/or concerns.

Legal Documents

Indenture. The Master Indenture and First Supplemental Indenture (collectively “Indenture”) is to be entered into by and between the Authority, as the issuer of the 2022B Bonds, and Wilmington Trust, N.A. (“Wilmington Trust”), as the Trustee for the 2022B Bonds. This agreement sets forth terms of the 2022B Bonds and contains the responsibilities and duties of the Trustee and the rights of the bondholders. Wilmington Trust was selected through a RFQ process, which was solicited with the assistance of the City’s Municipal Advisor, Public Resources Advisory Group.

Installment Purchase Contract. The Installment Purchase Contract and First Supplemental Installment Purchase Contract (collectively “Contract”) is entered into by and between the City and the Authority. The Contract sets forth terms for the Installment Payments for the 2022B Bonds, which are made by the City from the Net System Revenues to the Authority to purchase the prior projects that were financed by the Authority’s issued Subordinate Notes, Series A.

Bond Purchase Agreement. The Bond Purchase Agreement is an agreement by and among the Authority, the City, and the Underwriters as the initial purchasers of the 2022B Bonds. The Bond Purchase Agreement specifies the representations and warranties of the Authority and the City, the documents to be executed at closing, the final pricing information for the 2022B Bonds and the conditions that allow the Underwriters to cancel the purchase of the 2022B Bonds. The Bond Purchase Agreement also specifies the amount of the Underwriters’ discount on the 2022B Bonds, which the Authorizing Resolutions state shall not exceed 0.2% of the principal amount of the 2022B Bonds.

Continuing Disclosure Certificate. Pursuant to the Continuing Disclosure Certificate, the form of which is appended to the POS, the City will covenant for the benefit of owners of the 2022B Bonds to provide to the Electronic Municipal Market Access System (“EMMA System”) certain financial information and operating data relating to the Wastewater System by not later than April 1 after the end of each fiscal year of the City, commencing on April 1, 2023 with the report for the 2021-22 Fiscal Year (“Annual Report”), and to provide notices of the occurrence of certain listed events. The specific nature of the information to be contained in the Annual Report or the notices of listed events is summarized in the Continuing Disclosure Certificate. These covenants in the Continuing Disclosure Certificate will be made by the City to assist the underwriters of the 2022B Bonds in complying with SEC Rule 15c2-12(b)(5).

Amended and Restated Master Resolution. The Amended and Restated Master Resolution serves as the governing resolution of the City which allocates and pledges Net System Revenues received from operating the Wastewater System, including associated revenues from Santa Clara and the Tributary Agencies, and establishes covenants to secure the payment of obligations, including the City’s Installment Payments under the Installment Purchase Contract, from such funds.

The covenants in the Amended and Restated Master Resolution include limitations on the sale or disposition of property, maintaining the Sanitary Sewer Collection System and the Treatment Plant in operating order, and prescribing rates and charges to provide sufficient revenues to cover payment obligations at minimum required levels.

The Amended and Restated Master Resolution amends various definitions of the Original Master Resolution, excluding South Bay Water Recycling Program revenues and maintenance and operation costs from System Revenues, distinguishes the Sanitary Sewer Collection System from the Treatment Plant (collectively “Wastewater System”), and makes other conforming changes.

Financing Team Participants

- **City’s Municipal Advisor:** Public Resources Advisory Group
- **Bond Counsel:** Orrick, Herrington & Sutcliffe LLP
- **Disclosure Counsel:** Jones Hall, A Professional Law Corporation
- **Underwriters of 2022B Bonds** Senior Manager (Book Runner): Wells Fargo Corporate & Investment Banking
Co-Senior Manager: Morgan Stanley & Co.
Co-Managers: Academy Securities, Ramirez & Co., Inc., and Stifel Nicolaus & Co.
- **Trustee for 2022B Bonds** Wilmington Trust, N.A.

Financing Schedule

City Council/Authority Board Approval:	November 15, 2022
Bond Pricing (expected):	December 1, 2022
Bond Closing (expected):	December 15, 2022

CONCLUSION

Approval of these recommendations will authorize the issuance and sale of the Authority Wastewater Revenue Bonds, Series 2022B (Green Bonds – Climate Bond Certified) to (i) refund the Authority’s outstanding Subordinate Wastewater Revenue Notes, Series A to establish a long-term fixed-rate debt structure in a rising interest rate environment, (ii) amend and restate Resolution No. 78382 to exclude South Bay Water Recycling Program revenues and maintenance and operation costs from System Revenues in addition to other conforming changes, (iii) amend and restate the credit agreement with Wells Fargo Bank, National Association and fee letter to conform with the issuance and sale of the 2022B Bonds, and (iv) pay for the cost of issuing the 2022B Bonds.

EVALUATION AND FOLLOW-UP

This memorandum presents a recommendation for the City Council and the City of San José Financing Authority Board approval of various actions related to the issuance of the 2022B Bonds and requires no follow-up to the City Council. The Finance Department will submit an informational memorandum on the pricing results after the closing of the 2022B Bonds.

CLIMATE SMART SAN JOSE

The projects associated with these green bonds support energy efficiency, pollution prevention and sustainable wastewater management practices, aligning with Climate Smart goals.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the November 15, 2022 City Council meeting, along with the referenced financing documents.

COORDINATION

This report was prepared by the Finance Department and the Environmental Services Department in coordination with the City Manager’s Budget Office, the City Attorney’s Office, and the financing team participants.

COMMISSION RECOMMENDATION/INPUT

There is no commission recommendation or input associated with this action.

FISCAL/POLICY ALIGNMENT

The proposed financing plan is consistent with the City Council approved Guiding Principles for Budget and Financial Management for the City to meet its legal commitments and requirements with respect to repayment of bonds, and is consistent with the City Debt Management Policy, which establishes the following equally important objectives in order to obtain cost-effective access to the capital markets:

- Minimize debt service and issuance costs
- Maintain access to cost-effective borrowing
- Achieve the highest practical credit rating

November 1, 2022

Subject: City of San José Financing Authority Wastewater Revenue Bonds, Series 2022B (Green Bonds – Climate Bond Certified)

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- Full and timely repayment of debt
- Maintain full and complete financial disclosure and reporting
- Ensure compliance with applicable State and Federal laws

COST SUMMARY/IMPLICATIONS

Bond proceeds of \$300 million and the subsequent repayment of Wastewater Revenue Notes will be recorded in the San José-Santa Clara Treatment Plant Capital Fund. Professional services (bond and disclosure counsel fees, municipal advisor fees, rating agency fees, and green bonds designation fees) and other related costs are estimated to be approximately \$714,234 and will be paid from bond proceeds (principal and premium) from the 2022B Bonds. The bond proceeds will be net of the underwriters' discount of approximately \$479,983. The underwriters, municipal advisor, and bond/disclosure counsel work on a contingent basis and are only paid from the bond proceeds upon the successful closing of the 2022B Bonds.

CEQA

Not a Project, File No. PP17-004, 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, Financing Authority

/s/

KERRIE ROMANOW
Director of Environmental Services

For questions related to the bond issuance, please contact Qianyu Sun, Deputy Director of Finance – Debt & Treasury Management at (408) 535-7832 or qianyu.sun@sanjoseca.gov. For questions related to the Treatment Plant, please contact Napp Fukuda, Assistant Director, Environmental Services at (408) 793-5353 or napp.fukuda@sanjoseca.gov.