



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Julia H. Cooper

**SUBJECT: CITY OF SAN JOSE FINANCING  
AUTHORITY TAXABLE LEASE  
REVENUE BONDS, SERIES 2020A  
(CIVIC CENTER REFUNDING)**

**DATE:** August 12, 2020

Approved

Date

8/13/2020

## **RECOMMENDATION**

- (a) It is recommended that City Council take the following actions:
- (1) Conduct a Public Hearing for the approval of the issuance by the City of San José Financing Authority of Taxable Lease Revenue Bonds, Series 2020A (Civic Center Refunding Project) in order to finance the acquisition and construction of public improvements of the City of San José consisting of a full build-out of existing space within the 4<sup>th</sup> and San Fernando Garage for office space which will be occupied by the San José Community Energy Department and other City operations (the “Community Energy Department Project”); and
  - (2) Adopt a resolution approving and authorizing the execution of documents and approving related actions in connection with the issuance by the City of San José Financing Authority of Taxable Lease Revenue Bonds, Series 2020A (Civic Center Refunding Project) in the maximum principal amount not to exceed \$365,000,000 in connection with the refinancing of certain public capital improvements of the City of San José and the financing of the Community Energy Department Project.
- (b) It is recommended that the City of San José Financing Authority Board (“Authority”) adopt a resolution authorizing the issuance and sale of the Taxable Lease Revenue Bonds, Series 2020A (Civic Center Refunding Project) in the maximum principal amount not to exceed \$365,000,000 in connection with the refinancing of certain public capital improvements of the City of San José and the financing of the Community Energy Department Project, and approving and authorizing the execution of documents and approving related actions.

**UNDER BOTH THE DEBT MANAGEMENT POLICY AND SAN JOSE MUNICIPAL CODE SECTION 4.34.200, APPROVAL OF THE ISSUANCE OF THE LEASE REVENUE BONDS REQUIRES A TWO-THIRDS VOTE BY THE CITY COUNCIL (8 VOTES).**

## **OUTCOME**

Approval of these recommendations will allow for the issuance of the 2020A Bonds, achieve economic savings from refinancing of the Lease Revenue Refunding Bonds, Series 2006A (Civic Center Project) (the “2006A Bonds”), , Lease Revenue Refunding Bonds, Series 2013A (Civic Center Project) (the “2013A Bonds”), the Lease Revenue Bonds, Series 2007A (Recreational Facilities Refunding Project) (“the 2007A Bonds”), to prepay the City’s rental obligations under the Master Equipment Lease/Purchase Agreement with Banc of America Public Capital Corp. dated May 29, 2014 (“Master Equipment Lease”), and to finance the acquisition and construction of public improvements (the “Community Energy Department Project”) benefiting the San José Community Energy Department and other City operations.

## **EXECUTIVE SUMMARY**

The 2020A Bonds are being issued to (i) refund on a current basis, all of the outstanding 2006A Bonds in the outstanding principal amount of \$51.7 million and the related lease payment obligations of the City, (ii) refund on an advanced basis, all of the outstanding 2013A Bonds in the outstanding principal amount of \$267.8 million and the related lease payment obligations of the City, (iii) to refund all of the outstanding 2007A Bonds in the outstanding principal amount of \$8.2 million and the related lease payment obligations of the City; (iv) prepay the City’s rental obligations under the Master Equipment Lease in the outstanding principal amount of \$12.4 million (v) finance the acquisition and construction of public improvements benefitting the City, including the build-out of existing space within the 4th and San Fernando Garage for office space to be occupied by the San José Community Energy Department (“SJCE”) and other city operations in the principal amount of \$4.8 million; and (vi) pay the costs of issuing the 2020A Bonds. The refunding plan calls for the release of more than \$26.3 million on deposit in a reserve fund for the 2006A Bonds and the 2013A Bonds, which funds which will be used to refund the 2006A Bonds and the 2013A Bonds, and a release of \$2.2 million in a reserve fund for the 2007A Bonds, and issuing a principal amount of 2020A Bonds sufficient to prepay the 2007A Bonds and the City’s lease payment obligations under the Master Equipment Lease.

The 2020A Bonds are projected to generate approximately \$42.3 million in net present value savings if current interest rates prevail when such bonds are sold. The 2020-2021 Adopted Operating Budget recognized one-time funds of \$26 million from the release of the Debt Service Reserve Funds associated with the refunding of City Hall and applied those to the defeasance of the 2007A Bonds and Master Equipment Lease. As described above, the refunding plan calls for the release of such funds to refund the 2006A Bonds and the 2013A Bonds in accordance with Federal tax law, and issuing an equal principal amount of 2020A Bonds to prepay the 2007A Bonds and the City’s lease payment obligations under the Master Equipment Lease with the net impact being the same as the steps outlined in the 2020-2021 Adopted Operating Budget. The refunding plan is anticipated to yield ongoing savings of \$4.2 million in the General Fund.

## **BACKGROUND**

The Authority has commonly issued lease revenue bonds to assist the City to finance the acquisition and construction of public facilities. Unlike the City's General Obligation Bonds, no new property taxes are imposed to pay the debt service on such bonds and no voter approval is therefore required. Instead, lease revenue bonds are paid from lease revenues payable from the City's General Fund for the beneficial use of facilities. Typically, under this structure the City enters into a site lease with the Authority under which the City leases City-owned facilities to the Authority, and concurrently, the City and the Authority enter into a lease agreement, under which the Authority leases such facilities back to the City. In the case of the 2020A Bonds, concurrently with the issuance thereof, the City will lease the City Hall facility, including an office tower, rotunda, council wing and on-site parking ("Civic Center") to the Authority, and the Authority will lease the Civic Center back to the City pursuant to a lease agreement (the "Lease Agreement") in consideration of an upfront rental payment sufficient to provide funds for the refunding of the 2006A Bonds, the 2013A Bonds, and the 2007A Bonds, the prepayment of the Master Equipment Lease, the acquisition and construction of the Community Energy Department Project, and the payment of costs of issuance.

Under the terms of the Lease Agreement, in exchange for beneficial use of the Civic Center, the City will make lease payments to the Authority (the "Lease Payments"). The City will covenant under the Lease Agreement that as long as City has beneficial use thereof, the City will take all necessary actions to include the annual Lease Payments required to be made by the City under the Lease Agreement in the City's annual budget and to make the necessary appropriations annually.

Under the Indenture, the Lease Payments to be made by the City to the Authority will be the source of the Authority's repayment of the 2020A Bonds. These Lease Payments are payable from the City's General Fund, however on a budgetary basis the City allocates lease payments to various funds based on their proportionate share of the Civic Center.

The financing plan for the construction of the Civic Center required the issuance of multiple series of bonds of which the 2006A Bonds and the 2013A Bonds are currently outstanding.

The purpose of the financing and respective outstanding principal amounts of the 2006A Bonds, the 2013A Bonds, the 2007A Bonds and the Master Equipment Lease are provided below.

**Prior Bonds for City Hall to Be Refunded:**

- **2006A Bonds**

On June 1, 2006, the Authority issued the 2006A Bonds for the purpose of refinancing previously issued lease revenue bonds, which were issued by the Authority to finance the construction of City Hall, and related improvements. The principal amount outstanding on the 2006A Bonds is \$51,670,000 as of June 30, 2020. All of the outstanding 2006A Bonds are expected to be refunded on a taxable basis with proceeds of the 2020A Bonds on or about the date of issuance thereof.

- **2013A Bonds**

On May 28, 2013, the Authority issued the 2013A Bonds for the purpose of refinancing previously issued lease revenue bonds of the Authority, which were issued by the Authority to finance the construction of City Hall, and related improvements. The principal amount outstanding on the 2013A Bonds is \$267,830,000 as of June 30, 2020. All of the outstanding 2013A Bonds are expected to be advance refunded on a taxable basis with proceeds of the 2020A Bonds on or about the date of issuance thereof.

**Other Obligations to Be Refunded:**

- **2007A Bonds**

On June 28, 2007, the Authority issued the 2007A Bonds for the purpose of refinancing previously issued lease revenue bonds that financed community facility and golf course projects. The principal amount outstanding on the 2007A Bonds is \$9,195,000 as of June 30, 2020. After the August 15, 2020 principal payment, the principal amount outstanding on the 2007A Bonds will be \$8,235,000. All of the bonds are expected to be refunded with proceeds of the 2020A Bonds on or about the date of issuance thereof. As described above, the refunding plan calls for the release of funds on deposit in a debt service reserve fund to refund the 2006A Bonds and the 2013A Bonds in accordance with Federal tax law thereby reducing the principal amount of 2020A Bonds required for such purpose. It is anticipated that the Authority will issue 2020A Bonds in a principal equal to the amounts released from such reserve fund to prepay the 2007A Bonds and the City's lease payment obligations under the Master Equipment Lease.

- **Master Equipment Lease (ESCO)**

On May 29, 2014, the City entered into a Master Equipment Lease Purchase Agreement with Banc of America Public Capital Corporation to purchase energy efficient equipment (streetlights). The City's lease payment obligations under the Master Equipment Lease were outstanding in the principal amount of \$12,431,424 as of June 30, 2020 and are expected to be prepaid on the next available prepayment date of December 1, 2020.

### **Debt Service Savings**

The par amount of the 2020A Bonds are estimated at \$356.9 million. Based on prevailing market rates, the savings generated by the refunding of the 2006A Bonds, the 2013A Bonds, the 2007A Bonds and the prepayment of the Master Equipment Lease is estimated to produce a net present value savings of approximately 12.4%, significantly higher than the 3% level considered as economically viable in the Debt Management Policy. The City estimates total net present value savings thereof in the amount of \$42.3 million over the life of the 2020A Bonds.

All savings reflected are estimates based on July 30, 2020 interest rates. The actual savings will depend on the interest rates set for the new 2020A Bonds which are anticipated to be sold at the end of September 2020. J.P. Morgan was selected through a competitive RFP process to lead a team of four investment banks underwriting the 2020A Bonds and has provided the estimates contained in this memo.

As the savings are subject to interest rate risk between now and the pricing of the 2020A Bonds, J.P. Morgan has further estimated that if interest rates were to rise, for example, by 25 basis points or 0.25%, the estimated net present value savings would decrease by more than \$7 million. Other factors that could impact the pricing of the 2020A Bonds, include the supply and demand for taxable municipal bonds (like the 2020A Bonds), general interest rates, and the ratings assigned to the 2020A Bonds by rating agencies and related commentary of such agencies. Other technical aspects of the municipal bond market, which can impact pricing of the 2020A Bonds include the relationship between the interest coupon rate on the 2020A Bonds, yields and prepayment features negotiated at the time of the bond sale. The exact savings will almost certainly differ from the estimates provided here and there can be no assurance the full savings reflected here can be achieved in the bond market in late September 2020 given changes in national fiscal and monetary policy that could change conditions at the time of sale.

### **Debt Management Policy and Municipal Code Requirements Related to Lease Financings**

The proposal to issue the 2020A Bonds is subject to the City's Debt Management Policy, City Council Policy 1-15 and San José Municipal Code Chapter 4.34 related to lease financings. Under Section III (D) of the Debt Management Policy, the Finance Department is required to conduct its due diligence for the proposed lease financing of the project to be financed and identify a source of repayment. These provisions do not apply to a refunding of existing bonds in which case staff does an analysis of the savings that would result. In this case the primary purpose of the 2020A Bonds is to refund outstanding bonds and prepay the City's lease obligations under Master Equipment Lease. A small portion of the proceeds of the 2020A Bonds will provide funding for the Community Energy Department Project. Under these circumstances, consistent with the Debt Management Policy staff has done an analysis of the savings that the refunding is anticipated to generate as described below. On a budgetary basis the City allocates debt service for City Hall to the general fund, special funds and capital funds based on an allocation of square footage. The current methodology will be modified to include the addition of approximately 6,075 square feet of new space.

The Debt Management Policy's provision that requires a feasibility study be performed prior to the issuance of a lease financing are not applicable to the issuance of these lease revenue bonds as a feasibility study is required only when the revenues of the project being financed are the source of repayment.

**UNDER BOTH THE DEBT MANAGEMENT POLICY AND SAN JOSE MUNICIPAL CODE SECTION 4.34.200, APPROVAL OF THE ISSUANCE OF THESE LEASE REVENUE BONDS REQUIRES A TWO-THIRDS VOTE BY THE CITY COUNCIL (8 VOTES).**

**ANALYSIS**

The following section addresses staff's recommendation to adopt the Authorizing Resolutions and includes discussions of the plan of finance, bond financing documents, financing team participants and the financing schedule.

**Plan of Finance**

The 2020A Bonds are being issued to accomplish the following primary objectives:

- Realize overall savings in debt service
- Advance refund on a taxable basis the 2013A Bonds and current refund on a taxable basis the 2006A Bonds
- Enable the use of the existing funds on deposit in the debt service reserve fund to refund the 2006A Bonds and the 2013A Bonds and will in turn permit the City to issue 2020A Bonds to refund the 2007A Bonds and Master Equipment Lease Agreement creating budgetary savings:
  - Refunding the 2006A and 2013A Bonds results in annual debt service savings of approximately \$800,000 per year (attributable to the General Fund)
  - Refunding the 2007A Bonds on a taxable basis thereby removing all private activity restrictions on the Los Lagos Golf Course and eliminating \$1.3 million per year in debt service from the Golf Course Fund
  - Prepay the obligations under the Master Equipment Lease Agreement on December 1, 2020, saving approximately \$940,000 on a present value basis.
- Provide funding for the Community Energy Department Project in the amount of \$4.8 million.

The Tax Cuts and Jobs Act (TCJA) passed by Congress and signed into law by the President in 2017 made several changes to the tax code which impacted governments, a significant change was the elimination of tax-exempt advance refundings. The 2013A Bonds are not eligible for a tax-exempt current refunding until 2023. While tax-exempt rates would typically be lower than taxable rates, staff believes that the substantial interest rate savings available now due to the current low taxable interest rate environment, the ability to eliminate the debt service reserve

fund, refund the 2007A Bonds and prepay the Master Lease Agreement outweigh the interest rate uncertainty of waiting an additional two and half years to refund the 2013A Bonds on a tax-exempt basis.

Additionally, refunding the 2006A Bonds and 2013A Bonds on a taxable basis removes all Federal tax law restrictions relating to private activity associated with facilities that are financed or refinanced with tax-exempt proceeds, like City Hall and the Los Lagos Golf Course. The US Patent and Trade Office lease is the largest private activity use in City Hall because use by the United States government constitutes private use. The current lease agreement with the USPTO was negotiated and executed in compliance with federal tax laws. Eliminating the private activity restrictions by using taxable bonds in the proposed refunding will permit the City to enter into future agreements for the use of City Hall without having to comply with the private activity regulations under federal tax law.

### ***Description of the 2020A Bonds***

**2020A Bonds.** The 2020A Bonds will be issued on a taxable basis to refund on a current basis the 2006A Bonds and the 2007A Bonds, advance refund the 2013A Bonds, prepay the City's rental obligations under the Master Equipment Lease, finance the Community Energy Department Project, and to pay the costs of issuing the Bonds.

**Refunding Plan.** The 2020A Bonds will be sold on a negotiated basis and the proceeds to refund on a current basis the 2006A Bonds and the 2007A Bonds, advance refund the 2013A Bonds, provide funding for the Community Energy Department Project, and prepay the Master Equipment Lease and pay the costs of issuing the 2020A Bonds to accomplish overall debt service savings.

The Debt Management Policy adopted by Council specifies a minimum of 3% net present value savings for a refunding to be considered economically viable and provides for consideration of refundings below the 3% threshold on a case-by-case basis, including refundings which achieve City objectives relating to, among other things, achieving a desired debt service profile. While actual savings will depend on prevailing interest rates at the time of the bond sale, as of July 30, 2020, the proposed refundings are projected to generate aggregate net present value savings of approximately \$42.3 million, or 12.4% as a percent of refunded par, well in excess of the 3% savings threshold. The 2020-2021 Adopted Operating Budget recognized one-time funds of \$26 million from the refunding of City Hall and an ongoing debt service savings of \$4.2 million in the General Fund.

**Aggregate Debt Service Structure.** Debt service on 2020A Bonds will be payable from Lease Payments made by the City to the Authority for the beneficial use and occupancy of the Civic Center. Total debt service on the 2020A Bonds is estimated to be approximately \$446,365,000, of which \$356,890,000 is the par amount of principal issued and approximately \$89,475,000 is interest cost. Interest on the 2020A Bonds accrues from the date of delivery and is payable semiannually on June 1 and December 1 of each year, commencing June 1, 2021. Average

annual debt service is projected to decline from \$27.6 million to \$23.5 million, a yearly savings of \$4.2 million, (including refunding of the 2006A Bonds, 2007A Bonds, 2013A Bonds and prepayment of the Master Equipment Lease) if interest rates remain at current levels when the 2020A Bonds are sold at the end of September 2020. Payments of principal and interest on the 2020A Bonds will be paid by the Trustee and have a final maturity on June 1, 2039. The estimated true interest cost for the 2020A Bonds is approximately 2.48% based on market rates as of July 30, 2020.

***Public Improvements - The Community Energy Department Project.*** A small portion of the 2020A Bonds proceeds will be used to finance the acquisition and construction of public improvements benefitting the City, including capital improvements and full build-out of existing space in the 4th and San Fernando Garage for office space to be occupied by the San José Community Energy Department and other city operations. Total amount of space to be improved is approximately 6,075 square feet.

***2020A Bonds Estimated Sources and Uses of Funds.***

The estimated sources and uses of the 2020A Bonds and other funds for the financing are shown below:

<b>City of San José</b> <b>Taxable Lease Revenue Refunding Bonds, Series 2020A</b> <b>Estimated Sources and Uses of Funds <sup>(1)</sup></b>	
<u>Sources of Funds:</u>	
Bond Proceeds – Par Amount	\$ 356,890,000
Prior Civic Center Debt Service Reserve Fund Release	26,321,962
Prior 2007A Debt Service Reserve Fund Release	<u>2,200,000</u>
Total Sources	\$385,411,962
<u>Uses of Funds:</u>	
Project Fund <sup>(2)</sup>	\$ 4,800,000
Refunding Escrow Deposits 2006A	52,463,342
Refunding Escrow Deposits 2013A	305,064,913
Refunding Escrow Deposits 2007A	8,275,485
Prepay Master Equipment Lease	12,875,677
Cost of Issuance <sup>(3)</sup>	504,985
Underwriter's Discount	<u>1,427,560</u>
Total Uses	\$ 385,411,962
<sup>(1)</sup> Preliminary; subject to change. <sup>(2)</sup> Represents funds to be used to finance the acquisition and construction of the Community Energy Department Project. <sup>(3)</sup> Estimate of Bond Counsel/Disclosure Counsel fees and expenses, Municipal Advisor fees and expenses, rating agencies fees, trustee fees and expenses, and printing costs.	



***Obligation to Pay.*** Under the Lease Agreement, the City agrees to pay to the Authority, its successors and assigns, the lease payments in the amounts specified in the lease, to be due and payable in immediately available funds on the interest payment dates. The Authority will assign the City's Lease Payments to the Trustee. The Lease Payments will be remitted by the City to the Trustee on each of the lease payment dates specified in the Lease Agreement.

***Reserve Requirement.*** The existing lease revenue bonds funded debt service reserve funds, which provided security to bondholders in the event the City failed to make lease payments. Those debt service reserve funds will be released as a source of funds for this transaction. Based on the City's high ratings, the low earnings available for such reserves and rating agencies' and investors' changing requirements for such reserves, the City does not expect a debt service reserve fund will be required to successfully market the 2020A Bonds and no debt service reserve account is contemplated by the financing plan with respect to the 2020A Bonds.

***Reserve Release.*** The funds on deposit in the respective debt service funds for the 2006A Bonds, the 2013A Bonds and the 2007A Bonds will be used to defease the 2013A Bonds and refund the 2006A and the 2007A Bonds.

***Source of Payments; Covenant to Budget and Appropriate.*** Under the Lease Agreement, the Lease Payments are payable from any source of legally available funds of the City, subject to the provisions of the Lease regarding abatement of Lease Payments. During periods that the City does not have beneficial use of the Civic Center due to physical damage or destruction, the Lease Agreement provides that there is an abatement of Lease Payments.

Subject to the provisions of the Lease Agreement regarding abatement, the City covenants in the Lease Agreement to take all actions required to include the lease payments in each of its budgets during the term of the Lease Agreement and to make the necessary appropriations for all lease payments and additional rental payments annually. This covenant of the City constitutes a duty imposed by law and each and every public official of the City is required to take all actions required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements agreed to be carried out and performed by the City under the Lease Agreement. Notwithstanding any other provision of the Lease Agreement, the City will in no event be obligated to pay any Lease Payments or additional rental payments due under the Lease Agreement in any rental period for any succeeding rental period.

### **2020A Bond Financing Documents**

Both the City Council and the Authority Board must adopt resolutions authorizing the issuance and sale of the 2020A Bonds (the "City Authorizing Resolution" and the "Authority Authorizing Resolution" and collectively, the "Authorizing Resolutions") and other related actions. The Authorizing Resolutions authorize the issuance and sale of the 2020A Bonds in the principal amount not to exceed \$365,000,000 with a final maturity of June 1, 2039. Both Authorizing Resolutions will be posted to the agenda webpage for this joint meeting of the City Council and Authority Board on or about August 14, 2020.

There are bond financing documents that require City Council and/or Authority Board approval to proceed with the issuance of 2020A Bonds.

Staff recommends that the City Manager, Director of Finance, or their authorized designees and the Authority's Executive Director, Treasurer, or their authorized designees ("Authorized Officers") be authorized to execute the agreements on behalf of the City and the Authority as described below. As modifications may be required prior to the closing, staff also recommends that 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 2020A Bonds and the refunding of the 2006A Bonds, the 2007A Bonds, the 2013A Bonds and the prepayment of the Master Equipment Lease. Staff recommends that the Authorized Officers each be authorized to execute these other agreements and documents upon consultation with the City Attorney's Office.

Additionally, staff recommends that the Authorized Officers each be authorized to take actions as are necessary or advisable to obtain a municipal bond insurance policy or a debt service reserve policy for the 2020A Bonds if it is determined, upon consultation with the Underwriters (defined below in Financing Participants) and the Municipal Advisor to the Authority, that such a policy will facilitate the issuance of the bonds and/or reduce the true interest costs of the 2020A Bonds.

On or about August 14, 2020 the following financing documents for the 2020A Bonds, in substantially final form, will be posted to the City's agenda website for the August 25, 2020 joint meeting of the Authority Board and City Council. City Council approval requires the affirmative vote by two-thirds of the City Council members (8 votes). These documents are required to be approved by City Council and Authority Board in order for the Authority to issue the 2020A Bonds.

**Official Statement.** The draft Preliminary Official Statement ("POS") has been reviewed and approved for transmittal to the City Council by the Disclosure Working Group. 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 2020A 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 2020A Bonds. If the City Council concludes that the POS includes all facts that would be material to an investor in the 2020A Bonds, and authorizes staff to proceed with the issuance of the 2020A 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 2020A Bonds, whether relating to their repayment, tax status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the POS. Section 206 of the Advisers Act prohibits misstatements or misleading omissions of material facts and other fraudulent acts and practices in connection with the conduct of an investment advisory business. In the Release, the SEC stated that the steps that a member of the 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 2020A Bonds, as applicable
Documents for Approval; Security for the 2020A Bonds	Requested Approvals

***The information to address these areas in the Preliminary Official Statement can be found in body of the document in the INTRODUCTION section which describes the purpose of the 2020A Bonds and the source of repayment, among other things. More detailed information on these topics and on the risks related to repayment of the 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 retirement plans, is included in order to give investors an understanding of the impact of retirement costs on the City's budget.***

Staff recommends that 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 that 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 Preliminary Official Statement and believes it to be accurate and complete in all material aspects. Staff further recommends that the he 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 any personal knowledge that any of the material information in the Preliminary Official Statement is false or misleading, the councilmember must raise these issues prior to approval of the distribution of the document to potential investors in the 2020A Bonds.***

City staff, representatives of Jones Hall, A Professional Law Corporation, the City's bond and disclosure counsel for the 2020A Bonds, and representatives Public Resources Advisory Group,

the City's Municipal Advisor will be available at the Council meeting on August 25, 2020 to address any questions, issues, and/or concerns.

### **Legal Documents**

***Indenture of Trust.*** The Indenture of Trust (the "2020A Indenture") is to be entered into by and between the Authority, as the issuer of the 2020A Bonds, and Wilmington Trust, National Association, as the Trustee for the 2020A Bonds. This agreement sets forth terms of the 2020A Bonds and contains the responsibilities and duties of the Trustee and the rights of the bondholders. Wilmington Trust was selected through an RFP process based on the completeness of their reply, prior City experience with Wilmington Trust acting as trustee on other bond issues, and their proposed fees.

***Site Lease.*** The Site Lease is between the City (lessor) and the Authority (lessee). The City will lease the Civic Center to the Authority. In exchange the Authority will make an upfront payment (the amount of the 2020A Bonds) that will be applied, among other costs to the refunding of the 2006A Bonds, the 2007A Bonds, the 2013A Bonds, the prepayment of the Master Equipment Lease and the financing of the Community Energy Department Project.

***Lease Agreement.*** Under the Lease Agreement, the City will lease the City Center back from the Authority, under which the City has agreed to pay semiannual Lease Payments for the beneficial use of the Civic Center. The Lease Agreement also provides that lease payments are reduced or eliminated when there is substantial interference with the City's use and occupancy of the facilities, such as damage or destruction from "abatement events."

***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 2020A 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 debt service schedule for the 2020A Bonds and the conditions that allow the Underwriters to cancel the purchase of the 2020A Bonds. The Bond Purchase Agreement also specifies the amount of the Underwriters' discount on the 2020A Bonds, which staff recommends not exceed 0.4% of the par amount of the 2020A Bonds.

***Continuing Disclosure Certificate.*** Pursuant to the Continuing Disclosure Certificate, the form of which is appended to the Preliminary Official Statement, the City will covenant for the benefit of owners of the Bonds to provide to the Electronic Municipal Market Access System ("EMMA System") certain financial information and operating data relating to the City by not later than April 1 after the end of each fiscal year of the City, commencing on April 1, 2021 with the report for the 2019-20 Fiscal Year (the "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 Continuing Disclosure Certificate. These covenants in the Continuing Disclosure Certificate will be made by the City in order to assist the underwriters of the 2020A Bonds in complying with SEC Rule 15c2-12(b)(5).

### **Financing Team Participants**

- City's Municipal Advisor: Public Resources Advisory Group
- Bond and Disclosure Counsel: Jones Hall, A Professional Law Corporation
- Underwriters of 2020A Bonds: Senior Manager: J.P. Morgan Securities LLC  
Co-Managers: BofA Securities Inc., US Bancorp  
Investment, Inc., Jefferies LLC
- Trustee for 2020A Bonds: Wilmington Trust, N.A.
- Trustee for 2006A Bonds and 2013A Bonds: Wells Fargo Bank, N.A.
- Trustee for 2007A Bonds: U.S. Bank National Association

### **Financing Schedule**

City Council/Authority Board Approval:	August 25, 2020
Bond Pricing (expected):	September 10, 2020
Bond Closing (expected):	September 24, 2020

### **CONCLUSION**

Approval of these recommendations will allow for the issuance of the 2020A Bonds to (i) achieve projected economic savings in the amount of \$42.3 million from the refinancing of the 2006A Bonds, the 2013A Bonds, and the 2007A Bonds, and the prepayment of the City's rental obligations under the Master Equipment Lease Agreement, and (ii) finance the acquisition and construction of the Community Energy Department Project benefiting the San José Community Energy Department and other City operations. The 2020-2021 Adopted Operating Budget recognized one-time funds of \$26 million from the refunding of City Hall and is anticipated to yield an ongoing savings of \$4.2 million in the General Fund. Based on current interest rates, savings would exceed those levels.

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

This memorandum presents a recommendation for the City Council's approval of various actions related to the issuance of the 2020A Bonds and requires no follow-up to the City Council. The Finance Department will submit an informational memo on the pricing results after the closing of the 2020A Bonds.

## **CLIMATE SMART SAN JOSE**

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

## **PUBLIC OUTREACH**

It is necessary that Council conduct a public hearing, as required by State law, to authorize the issuance of a portion of the 2020A Bonds for the Community Energy Department Project. No later than 5 days before the public hearing to be held by the City Council on August 25, 2020, a notice advertising the hearing will be published in the *San José Post-Record*.

The public hearing will allow the City Council and Authority Board to hear and consider information concerning the approval of the financing by the Authority and the City for the issuance of the 2020A Bonds, space within the 4<sup>th</sup> and San Fernando Garage for office space which will initially be occupied by the Community Energy Department and other City operations, and the significant public benefit of such financing with the Authority as issuer. Under State law "significant public benefit" includes lower costs of financing. Establishing the financing with the Authority as the issuer, rather than the City as the issuer, makes the financing less complicated and, because the Authority can issue 2020A Bonds whereas the City would have to issue Certificates of Participation, which would involve creating a new financing program.

This memorandum will be posted on the City's Council Agenda website for the August 25, 2020 Council Meeting, along with all the referenced financing documents.

## **COORDINATION**

This report was prepared by the Finance Department in compliance with the City's Disclosure Policies and Procedures and 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'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 (including producing estimated net present value savings that are greater than 3% of the refunded debt); achieving a desired debt service profile; maintaining access to cost-effective borrowing; and ensuring compliance with applicable State and Federal laws.

The proposed financing plan is consistent with the 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;
- Full and timely repayment of debt;
- Maintain full and complete financial disclosure and reporting; and
- Ensure compliance with applicable State and Federal laws.

## **COST SUMMARY/IMPLICATIONS**

The 2020A Bonds will be limited obligations of the Authority, payable in whole from lease revenue payments related to the Civic Center for the payment of the 2020A Bonds and the interest thereon. The City will be obligated to make Lease Payments to the Trustee for debt service payments. These Lease Payments are payable from the City's General Fund, however on a budgetary basis the City allocates lease payments to various funds based on facility use. The 2020-2021 Adopted Operating Budget assumed ongoing savings attributed to the General Fund related to future 2020A Bonds debt service payments of \$800,000. The final amount for the General Fund and all contributing funds will be determined after a reconciliation of the completed transactions and included in the 2020-2021 Mid-Year Budget Review anticipated for City Council approval in February 2021. Additional annual budgetary savings related to the Master Lease Agreement prepayment is approximately \$2.1 million per year, and the refunding of the 2007A Bonds (a portion of the proceeds of which financed the Los Lagos Golf Course) will save approximately \$1.3 million.

Professional services (bond/disclosure counsel fees, municipal advisor fees, and rating agency fees) and other related costs are estimated to be approximately \$500,000 and will be paid from cost of issuance proceeds from the 2020A Bonds. The proceeds received by the City will be net of the underwriters' discount of approximately \$1,427,560. The underwriters, municipal advisor, and bond/disclosure counsel work on a contingency basis and are only paid from the cost of issuance proceeds upon the successful sale and close of the 2020A Bonds.

August 12, 2020

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**CEQA**

Categorically Exempt, File No. PP19-030, CEQA Guidelines Section 15301, Existing Facilities, and; 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

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