



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **FROM:** Julia H. Cooper
Matt Cano

SUBJECT: SEE BELOW

DATE: November 22, 2021

Approved

Date 11/22/21

COUNCIL DISTRICT: 2

SUBJECT: DECLARATION OF SURPLUS CONSTRUCTION FUNDS AND AUTHORIZATION OF FUNDS TRANSFER TO REDEMPTION FUND TO REDEEM BONDS CITY OF SAN JOSE LIMITED OBLIGATION IMPROVEMENT BONDS IMPROVEMENT DISTRICT NO. 99-218SJ (HELLYER-PIERCY) BOND SERIES 24Q

RECOMMENDATION

Adopt a resolution to determine surplus and order the disposition of funds remaining in the Improvement Fund, Redemption Fund and Reserve Fund for the Hellyer-Piercy Improvement District, Number 99-218SJ to:

- (a) Authorize from the Improvement Fund: a credit to the owner(s) that have fully prepaid the assessment, transfer an amount to the City for costs incurred to determine surplus and redeem bonds, transfer an amount to the Redemption Fund to be applied to the redemption of outstanding bonds on March 2, 2022, and apply any remaining balance to the costs of projects authorized to be financed in accordance with the Resolution of Intention;
- (b) Authorize all amounts representing collected assessments and in the Reserve Fund be transferred to the Redemption Fund for the redemption of bonds on March 2, 2022; and
- (c) Authorize the City Manager, the Director of Finance, the Assistant Director of Finance, or the Deputy Director of Finance responsible for managing the City's debt program, for and in the name and on behalf of the City, to execute and deliver refunding instructions to the Fiscal Agent, in such form as may be approved; and to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the actions, including without limitation

- (i) determining the amounts to be transferred to the Redemption Fund and applied to the redemption of the bonds, and the amount to be applied to authorized project costs, and
- (ii) executing all certificates, instructions, and other document proposed to be delivered in connection with these actions.

OUTCOME

Approval of these recommendations will allow the City to complete the transfer and disbursement of surplus funds related to the improvement district for which capital improvements were bond financed and special assessments were levied and collected.

BACKGROUND

The City's Improvement District No. 99-218SJ (Hellyer-Piercy) (the "District") was established pursuant to provisions of the Municipal Improvement Act of 1913 (Division 12 of the California Streets and Highways Code), as amended pursuant to the provisions of the City of San Jose Second Alternative Public Improvement Procedure Act, Chapter 14.21 of the San Jose Municipal Code (the "Improvement Procedure" and, as so amended, collectively, the "Act"), with bonds to be issued to fund and finance improvements pursuant to the provisions of the Improvement Bond Act of 1915 (Division 10 of the California Streets and Highways Code), as amended pursuant to the Improvement Procedure (as so amended, collectively, the "Bond Law").

On June 27, 2000, the City Council adopted Resolution of Intention No. 69701 (the "Resolution of Intention") to finance the construction and acquisition of certain roadway improvements, storm drainage improvements, sewer and water facilities and related public improvement projects within the City and of benefit to land within the District. The assessment proceedings resulted in the levy of total Assessment of \$28,628,018.08 against the properties within the District. During the cash prepayment period three properties prepaid their Assessment. Therefore, the remaining amount of Assessments which were levied was \$27,598,679.26.

On May 15, 2001, the City Council adopted Resolution No. 70353 (the "Resolution of Issuance"), and approved a Fiscal Agent Agreement dated as of June 1, 2001 (the "Fiscal Agent Agreement") between the City and U.S. Bank Trust National Association (the "Fiscal Agent"). On June 26, 2001, the City issued \$27,595,000 Limited Obligation Improvement Bonds, Improvement District No. 99-218SJ (Hellyer-Piercy), Bond Series 24Q (the "Bonds"). The Bonds were issued upon and secured by unpaid assessments ("Assessments") levied against certain property within the District.

Under the Fiscal Agent Agreement, the City established funds and accounts, as required by law and the Fiscal Agent Agreement, to manage the cash flow of the District. Cash in these funds is currently held with the Fiscal Agent, U.S. Bank, N.A. and invested in the Local Agency Investment Fund and Money Market accounts.

- **Improvement Fund:** Proceeds of the Bonds were deposited into this fund for capital improvement of the District.
- **Reserve Fund:** To provide security for District bond payments in the event that property owners were delinquent in their installment payments, the City established Reserve Funds funded from bond proceeds. The governing documents established minimum reserve requirements. The Reserve Funds were regularly drawn down as the calculated reserve requirement was reduced as bonds were called or scheduled debt service payments were made.
- **Redemption Fund:** For all payments of principal and interest installments on the Assessments, together with redemption premiums are deposited in the Redemption Fund. Payments of the Bonds at maturity, or at redemption prior to maturity, and all interest on the Bonds are made from the Redemption fund.

As of March 2, 2022, the District is expected to have \$3,965,000¹ of the bonds outstanding with the final maturity date of September 2, 2023, a Bond Call Premium of \$118,950 (3%), and \$116,471.88 of interest also due on March 2, 2022, together with legal and various other fees and costs associated with the redemption. The City will also make refunds to the five who prepaid their assessments, which is expected to be less than \$250,000.

The City has unused funds in the amount of \$5,522,292.18:

City Held Funds	Trustee Held Funds	Balances (as of November 15, 2021)
Fund 706	-	\$ 340,767.64
-	Improvement Fund	3,074,329.24
-	Debt Service Reserve Fund	2,107,193.74
	Redemption Fund	1.56
		<u>\$ 5,522,292.18</u>

As a result, the City expects approximately \$1 million will remain available for remaining authorized capital projects in the District. The City did not levy an assessment for the District on the property tax roll for the current fiscal year since sufficient funds were available for redemption of the outstanding Bonds on March 2, 2022.

ANALYSIS

In compliance with Sections 10427, 10427.1 and 8885 of the Streets and Highways Code for disposition of surplus construction funds, staff recommends that the City Council approve the adoption of a resolution determining surplus and ordering disposition of unused funds for the District as follows:

¹ Based on partial redemption of Bonds in 2003 and 2012, principal remaining includes \$1,925,000 due on September 2, 2022 and \$2,040,000 due on September 2, 2023.

- i. All funds in Fund 706 from collected assessments totaling \$340,767.64 as of November 15, 2021, will be transferred to the Redemption Fund, which has a balance of \$1.56 as of November 15, 2021.
- ii. All funds in the Reserve Fund totaling \$2,107,193.74 as of November 15, 2021 to be transferred to the Redemption Fund.
- iii. The balance in the Improvement Fund of \$3,074,329.24 as of November 15, 2021, shall be applied as follows:
 - o Transfer \$1,000 to the General Fund plus costs for determining the surplus and redeeming the bonds.
 - o Credits to owners of five parcels that prepaid their assessments, upon providing satisfactory evidence of payment from claimants².
 - o Transfer the remaining amount needed to redeem the outstanding Bonds (including principal, interest and call premium) on March 2, 2022, to the Redemption Fund.
- iv. Any remaining balance will be applied to the costs of projects authorized by the Assessment District's original Resolution of Intention.

Staff is still working to identify the owners of the five parcels with prepaid assessments. In addition, staff and consultants are working to determine the cash payments due to the prepaid parcels. Therefore, the allocation of the balance in the Improvement Fund must still be confirmed.

CONCLUSION

Approval of these recommendations will allow the City to complete the transfer and disbursement of surplus funds, related to Improvement District No. 99-218SJ (Hellyer-Piercy), in an orderly distribution under the Act and the Bond Law, and will allow for the defeasance and redemption of the Bonds for which capital improvements were bond financed and special assessments were levied and collected.

EVALUATION AND FOLLOW-UP

This memorandum presents a recommendation for the City Council's approval of various actions related to the determination of surplus and disposition of funds and requires no follow-up to the City Council.

² Other assesses receive their credit through the fact that the Bonds are prepaid and there are no assessments on the tax roll to repay principal and interest on the bonds this FY year or next FY year.

CLIMATE SMART SAN JOSE

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

PUBLIC OUTREACH

The City will attempt to notify all eligible recipients of the claimable funds and act in a timely manner to process claims and issue refunds checks to those with valid claims. Notification will be mailed to property owners of record after the bonds are called in March 2022. Ownership information, amounts and claims process will be available on or before the March 2022 bond call. The claims process is anticipated to last a year.

This memorandum will also be posted on the City’s Council Agenda website for the December 7, 2021 Council Meeting.

COORDINATION

This joint staff report and the resolutions were prepared by the Public Works and Finance Departments in coordination with the City Manager’s Budget Office, and the City Attorney’s Office.

COMMISSION RECOMMENDATION/INPUT

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

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

/s/
MATT CANO
Director of Public Works

For questions about the Assessment District or Assessments, please contact Tom Borden, Program Manager, Public Works via phone at (408) 535-6831 or for bond related questions please contact Nikolai J. Sklaroff, Deputy Director of Finance, Debt & Treasury Management Division via phone at (408) 535-7832.