

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DETERMINING SURPLUS AND ORDERING DISPOSITION THEREOF FOR THE CITY OF SAN JOSE IMPROVEMENT DISTRICT NO. 99-218SJ (HELLYER-PIERCY)**

**WHEREAS**, in proceedings conducted by the City Council (the “Council”) of the City of San José (the “City”), pursuant to Resolution No. 69701, entitled “Resolution of Intention to Form City of San José Improvement District No. 99-218SJ (Hellyer-Piercy)” (the “Resolution of Intention”), adopted on June 27, 2000, under the Municipal Improvement Act of 1913, Division 12 of the California Streets and Highways Code (the “Act”), assessments in the total amount of \$27,595,000 (the “Assessments”) were levied and bonds (the “Bonds”) were issued to represent the unpaid assessments under the Improvement Bond Act of 1915, Division 10 of the California Streets and Highways Code (the “Bond Law”) in and for the City of San José Improvement District No. 99-218SJ (Hellyer-Piercy) (the “Assessment District”); and

**WHEREAS**, the Bonds were issued under a Fiscal Agent Agreement dated as of June 1, 2001, between the City and U.S. Bank National Association, as successor to U.S. Bank Trust National Association, as fiscal agent (the “Fiscal Agent”); and

**WHEREAS**, the Bonds currently may be redeemed on any interest payment date, and the City has determined that sufficient funds are in hand in the debt service reserve fund (the “Reserve Fund”), the redemption fund (the “Redemption Fund”) and the improvement fund (the “Improvement Fund”) established under the Fiscal Agent Agreement to redeem all of the Bonds on March 2, 2022; and

**WHEREAS**, in accordance with the Fiscal Agent Agreement and the Bond Law, because sufficient amounts are on hand under the Fiscal Agent Agreement for the

payment in full of the outstanding Bonds, the collection of the Assessments has been discontinued; and

**WHEREAS**, following the application of funds in the Reserve Fund, Redemption Fund and Improvement Fund to the redemption of the Bonds, an unencumbered balance will remain in the Improvement Fund; and

**WHEREAS**, this Council now wishes to make provision for the determination of surplus funds for their orderly distribution under the Act and the Bond Law, and for the defeasance and redemption of the Bonds;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**SECTION 1. Redemption Fund.** The City shall transfer all amounts it holds representing collected Assessments to the Fiscal Agent for deposit into the Redemption Fund, and shall instruct the Fiscal Agent to apply all amounts in the Redemption Fund to the redemption of the Bonds on March 2, 2022.

**SECTION 2. Reserve Fund.** The City shall instruct the Fiscal Agent to liquidate the Reserve Fund and transfer all amounts therein to the Redemption Fund, to be applied to the redemption of the Bonds on March 2, 2022.

**SECTION 3. Improvement Fund.** The balance in the Improvement Fund shall be disposed of as follows:

- (a) The City shall instruct the Fiscal Agent to transfer \$1,000 of such amount to the City for deposit in the General Fund of the City as authorized by the Act, and to transfer an additional amount to the City representing the costs

incurred by the City in determining the surplus amounts specified herein and redeeming the Bonds.

- (b) The City shall instruct the Fiscal Agent to transfer an amount to the Redemption Fund to be applied as a credit upon the assessment in the proportion which the amount of each individual assessment bears to the total amount of all individual assessments, as follows:
  - (i) for any individual assessments that have been fully paid and satisfied as of the date of the adoption of this Resolution, the credit thereon shall be given in cash (by check of the City) to the owner of record of the applicable parcel as of the date of the adoption of this Resolution upon their furnishing satisfactory evidence of payment, and the City shall instruct the Fiscal Agent to transfer this amount from the Redemption Fund to the City.
  - (ii) an amount shall be transferred to the Redemption Fund, to be applied to the redemption of the Bonds on March 2, 2022.
- (c) The City shall instruct the Fiscal Agent to transfer the remaining balance in the Improvement Fund to the City, to be applied to the costs of projects authorized to be financed by the Assessment District in accordance with the Resolution of Intention.

**SECTION 4. Redemption Instructions.** 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 (each an "Authorized Officer") are each authorized and directed 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 by any Authorized Officer, carrying out the foregoing provisions of this Resolution.

**SECTION 5. Official Actions.** The Authorized Officers of the City are hereby authorized and directed, jointly and severally, 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 described herein and otherwise effectuate the purposes of this Resolution, 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 documents proposed to be delivered in connection with the actions described herein. Any such actions previously taken by such officers are hereby ratified and confirmed.

**SECTION 6. Effective Date.** This Resolution shall take effect from and after the date of its passage and adoption.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk